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"A Marxian Theory of Law and Crime Under Capitalism: the Canadian State, class conflict and drug legislation"

by

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A. Elizabeth Comack

A Thesis

Submitted To The Faculty of Graduate Studies
And Research In Partial Fulfillment Of The
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"A MARXIAN THEORY OF LAW AND CRIME UNDER CAPITALISM: the Canadian State, class conflict and drug legislation"

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1984

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THE UNIVERSITY OF ALBERTA

FACULTY OF GRADUATE STUDIES AND RESEARCH

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research, for acceptance, a thesis entitled A MARXIAN THEORY OF LAW AND CRIME UNDER CAPITALISM submitted by A. ELIZABETH COMACK in partial fulfilment of the requirements for the degree of Doctor of Philosophy in Sociology.

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Abstract

The primary aim of this dissertation is to contribute to the development of criminological thought by formulating a Marxian theory of law and crime under capitalism. This objective is realized by, first, a critical examination of existing efforts to fashion a Marxist approach to crime. The main outcome of this critique is the perceived need to situate a theory of law and crime within a broader theory of the nature and role of the state in a capitalist society. As such, the current debate within Marxism over theorizing on the state is examined with a view to determining the requirements for a more coherent Marxist theory of the state. Here it is argued that the starting point for such a theory is to be found in the 'anatomy of bourgeois society'. Consequently, the discussion then moves to an examination of the materialist categories expounded by Marx. Using the basic premises of Marxist political economy, a theory of the capitalist state is outlined. By following the logic and parameters of this theory of the state, a Marxian theory of law and crime is constructed.

The formulation of the Marxian theory of law and crime involves a two-staged process. In the first stage, the form of 'law in general' is explained. The second stage of the analysis focuses on the context of the criminal law. That is, how does the criminal law function to maintain and reproduce social relations under capitalism? In addressing this question, the discussion considers both the way in which the criminal law figures in the overall operation of the capitalist state and the conditions under which criminalization will take place.

In order to test the explanatory power of the theory, the discussion moves to a consideration of a specific criminal law in a definite historical period. More specifically, the analysis is focused on the decision to criminalize opium use in Canada in the early 1900s. By critically evaluating the explanation offered by a labelling analysis, and then offering a Marxist analysis of the origins of the drug laws, the attempt is made to demonstrate the competing explanatory power of the two theoretical schemes. In this manner, the potential which the Marxian theory of law and crime holds for an understanding of the crime phenomenon is more readily assessed.

In sum, this dissertation is guided by two main objectives. One is theoretical in nature and concerns the formulation of a Marxist theory of law and crime under capitalism. The other is empirical in nature and pertains to an investigation of the decision to criminalize opiate use in Canada in the early 1900s. In so doing, it is hoped that the present work represents not only a contribution to the development of criminological thought, but also furthers our understanding of a significant period in Canadian history.

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Chapter One

Introduction

Since the early 1970s, there has been a concerted effort within criminology to construct an explicitly Marxist approach to explaining crime. Yet, while criminologists working toward this goal have achieved some measure of success, a coherent Marxian theory of law and crime under capitalism, however immanent, is not presently available. Consequently, this dissertation represents an attempt to contribute to the development of criminological thought by formulating such a theory.

More specifically, in the discussion which follows it will be argued that one of the primary shortcomings of Marxist criminology has been a failure to situate theorizing on law and crime within a broader theory of the nature and role of the state in capitalist societies. As such, by exploring the current debates concerning Marxist theories of the state along with the materialist categories expounded by Marx in Capital, the aim will be to develop a theory of the state which can account for both the form which the state takes in a capitalist society and the content of its activities. From this broader theory of the capitalist state an attempt will then be made to derive a Marxian theory of law and crime.

In order to adequately explain the many and varied factors which impinge upon the role of criminal law under capitalism, the discussion will have to be geared at a relatively high level of abstraction. A more concrete analysis of criminal law would require an investigation of a particular law in a definite historical period. Indeed, carrying out such an investigation would have the advantage of testing the explanatory power of the theoretical scheme. Consequently, the analysis will also consider a particular 'case example'. The subject which has been chosen for this purpose is the origins of Canadian drug legislation.

Prior to 1908 in Canada no legal restrictions were imposed on either the sale or consumption of opiates, whether for medicinal or pleasurable purposes. Beginning in that year, however, the Canadian Parliament began passing legislation to criminalize the use of opiates. While the 1908 Opium Act prohibited the importation and manufacture of opium for non-medicinal purposes, an amending act of 1911 broadened the scope of the legislation to include, among other provisions, the criminalization of opium smoking. The task, therefore, will be to account for the factors and conditions which led to the decision to criminalize opium use in Canada.

While the origins of Canadian narcotics legislation has been a subject which has received a considerable amount of attention within the literature, the bulk of this research has been predominantly descriptive in nature. One notable exception, however, is the work of Cook (1969; see also Small, 1978).[1] Cook utilizes a 'conflict model' for her analysis which relies heavily on the premises of the labelling perspective. Hence, by critically evaluating Cook's labelling analysis and then offering a Marxist analysis of the origins of the drug legislation, it will be possible to demonstrate the competing explanatory power of the two theoretical schemes. In this manner, the potential which a Marxian theory of law and crime holds for an understanding of the crime phenomena can be readily assessed. As well, such an investigation promises to provide insight into a significant period in Canadian history.

---

[1] It should be noted that Cook and Small are the same person. The 1978 article is a reprint of the 1969 one.

In sum, the research at hand will be guided by two main objectives. One is theoretical in nature and has to do with exploring the potential which a Marxist approach holds for an understanding of law and crime under capitalism. The other is empirical in nature and pertains to an investigation of the decision to criminalize opiate use in Canada in the early 1900s. These two objectives will be actualized in the following manner:

Chapter Two will consider the attempts which have been made to formulate a Marxist approach to crime, the criticisms which have been lodged against this approach, and the resulting issues which pertain to the prospects and promises of a Marxist approach for criminology. Included here will be suggestions for the direction in which work in the area should proceed, especially in terms of the need to 'take a step back' and focus, not solely on the legal system, but on the larger mechanism in which it operates: the capitalist state.

Chapter Three will follow up on the suggestions offered in Chapter Two by examining the current state of Marxist theorizing with respect to the nature and role of the state in a capitalist society. In this regard, there are two perspectives which have been prominent in the literature: the 'instrumentalist' position and the 'structuralist' position. Accordingly, the discussion will endeavor to outline each of these positions and critically appraise their merits and deficiencies with a view to establishing the requirements for a more coherent Marxist theory of the state. In particular, it will be argued that one of the major deficiencies of both positions is a failure to build systematically on the historical materialist categories developed by Marx in Capital. Moreover, it will be argued that this requirement is crucial to the formulation of a coherent theory of the state.

Following this, Chapter Four will entail an elaboration of the basic propositions of Marxist political economy and the materialist categories expounded by Marx in Capital.

Based upon the materialist categories in Marx's thought, the aim in Chapter Five will be to formulate a theory of the state in capitalist society. The discussion here will focus on the nature of the state-society relationship under capitalism with respect to the form which the state takes in a capitalist society and the content of its activities.

Using the logic and the parameters of the theory of the state developed in Chapter Five, Chapter Six will concern the delineation of a Marxian theory of law and crime. The discussion will center first around the issue of the class character of law, that is: how are we to account for the class character of law in a capitalist society? This will entail an examination of the particular form of law under capitalism. From here, the focus of attention will shift to the criminal law and the specific functions it performs in a capitalist society. This section of the analysis will be framed by one central question, that is: how does the criminal law function to maintain and reproduce capital social relations?

In Chapter Seven, the focus of the discussion will shift to the origins of Canadian narcotics legislation. Specifically, the events surrounding the passage of the first drug laws and a description of the content of the legislation will be outlined. In addition, the explanatory power of Cook's labelling analysis of the drug laws will be scrutinized and a preliminary outline of how a Marxian analysis would address the issue of the origins of Canada's drug laws will be provided. What will be suggested here is that the interpretation and explanation of the drug legislation from a Marxist perspective will require 'two steps backwards'. First, the drug laws must be situated within the larger issue of what will be referred to as the "Chinese question." And, second, the "Chinese question" itself must be located within the economic, political and ideological dynamics of the rise of industrial capitalism as a system of production and capitalists as a dominant class in Canada. Accordingly, the final two chapters will attempt to carry out this task.

Chapter Eight will focus on the rise of industrial capitalism in Canada, which occurred during the late 1800s and early 1900s. The aim here will be to trace the major economic, social and political conditions of the period with a view to establishing how the "Chinese question" intersects with these elements.

Using the discussion in Chapter Eight as a backdrop, the analysis in Chapter Nine will proceed with an examination of the "Chinese question" and how it was managed by the Canadian state in the late 1800s and early 1900s with the aim of delineating how the tenets of the Marxian theory of law and crime apply to the factors and conditions surrounding the emergence of the drug laws. The main concern here will be to explain how the problems posed by the "Chinese question" differed in nature as well as in their subsequent management by the state over time and how the drug laws became a part and parcel of that management.

Finally, the discussion will conclude with a brief summary of the research and a consideration of the adequacy of the Marxian theory of law and crime.

Chapter Two

Marxist Criminology

Over the last decade, there has been a growing demand within criminology for a deliberately "critical" and "radical" approach to explaining crime. This development took place, in large part, as a result of the increasing divisiveness and political economic conflicts of the late 1960s and early 1970s, for such occurrences generated issues directly relevant to criminological pursuits. Events such as the protests against the Vietnam war, the imposition of the War Measures Act, the Watergate affair, and the increasing militancy of students and racial groups served to showcase the importance of political and structural variables in defining what "crime" is and what types of crime will come to the attention of law enforcement and the administration of justice personnel.

Mainstream criminology, dominated as it was by consensus-oriented assumptions about the nature of the social world, was unable to address the kinds of issues which these events had posed. Many criminologists, as a consequence, became increasingly dissatisfied with the more traditional explanations of criminality. As Brickey (1978:4-5) explains, "(i)t was difficult for them to cling to traditional theories of crime when some of their students and colleagues were being arrested and imprisoned for participation in demonstrations and protests."

As the theories of mainstream criminology fell into disrepute, the perceived need for a new 'brand' of criminology gained in popularity.

To fashion such an approach, several criminologists were led to the writings of Karl Marx, since "his conceptual scheme appeared to match what they were observing" (Brickey, 1978:5). What resulted was a series of attempts to formulate an explicitly Marxist approach to crime.

The attempts to formulate a Marxist approach to crime will be the focus of the present chapter. The discussion will be divided into three components. First, a brief overview of the attempts made to construct a Marxist criminology will be presented. It should be noted that Marxist criminology has been characterized by a rather 'uneven' development, in the sense that no overall program or plan has been followed. Nevertheless, several writers do tend to stand out over others as their works have been particularly influential in the area. The discussion, as such, will, to use Klocklar's (1979:479) phrase, be centered on "the heavy hitters in the line-up."

Marxist criminology has received a considerable amount of critical attention within the discipline. Needless to say, however, not all of this attention has been 'positive'. Indeed, several criminologists have raised questions bearing upon the very utility of a Marxist approach for criminology. In the second portion of the chapter, an attempt will be made to highlight some of the major criticisms which have been lodged against the Marxist approach.

Finally, in light of the criticisms which have been put forward, issues pertaining to the prospects and promises of a Marxist approach for criminology will be addressed. Included here will be suggestions for the direction in which work in this area should proceed.

A. Attempts to Construct a Marxist Criminology

One of the first major efforts to advance an approach to crime founded upon Marxist premises came with the publication of The New Criminology in 1973.[1] Taylor, Walton and Young, the book's authors, stated their aim to be:

> . . . to open out the criminological debate by pointing to certain 'formal' and 'substantive' requirements of a full social theory of deviance, a theory that can explain the forms assumed by social control and deviant action in 'developed societies' (Taylor *et al*., 1973:269).

The New Criminology, however, is somewhat misbranded. For it does not provide the reader with a "new" criminology so much as a critique of existing approaches to crime - beginning with the Classical School and leaving off with the "new conflict theories"[2] - and the ideological and social functions performed by those approaches. Nevertheless, in the final chapter, the reader is presented with a brief sketch of what Taylor, Walton and Young believe to be the necessary elements of a 'full social theory'. This includes, above all, an emphasis on the political nature of crime, for their criminology is one which endeavors "to bring politics back into the discussion" (Taylor, *et al*., 1973:378).

Moreover, it is an approach which is "anti-positivistic" in its stance, since positivism - with its scientific neutrality and consensus world view - is seen to profess a doctrine of "non-responsibility" which merely enables the criminologist to ignore the consequences of his or her actions. In contra-distinction to positivism, Taylor and his colleagues advance a position which is "normatively committed to the abolition of inequalities of wealth and power and in particular of inequalities of property and life-chances" (Taylor _et_ _al_., 1973:381). Further to this, there is an expressed commitment to the realization of a crime-free society: "the abolition of crime _is_ possible under certain social arrangements" (Taylor _et_ _al_., 1973:281). Consequently, rather than the "value-free" position adhered to by positive criminologists, the authors' stance is one which could be described as "value-engaged" or "value-relevant."

---

[1] As one of the co-authors, Paul Walton commented, the book was written "as a first step in the development of a Marxist criminology" (Mintz, 1974:34).

[2] It should be noted here that there is a tendency in the literature to equate 'conflict theory' with a Marxist approach to crime. The two however, should be kept separate and distinct from one another. Perhaps the most significant difference between them is that while conflict theorists such as Turk (1969:51) regard questions such as "how authorities become authorities" as irrelevant, the Marxist approach considers such questions to be central to the analysis. Additionally, conflict theory upholds a pluralistic image of society, while Marxist theory adheres to a two-class model. For a good discussion of the differences between conflict and Marxist approaches in criminology, see: Gibbons, 1978: Chapters 6 and 7; and Beirne, 1979.

Finally, a 'full social theory' is also defined as one which embodies an "anti-correctionalist" position, since "all correctionalism is irreducibly bound up with the identification of deviance with pathology" (Taylor _et_ _al_., 1973:281). Instead, the emphasis is on the glorification of deviance. In one of their more oft-quoted passages, Taylor, Walton and Young proclaim:

> The task is to create the kind of society in which the facts of human diversity, organic or social, are not subject to the power to criminalize (Taylor _et_ _al_., 1973:282).

Above all, _The New Criminology_ marked a move away from viewing crime _in isolation from_ the wider theoretical premises and assumptions which have informed our thinking about crime. As Gouldner remarked in his Preface to the book:

> Clearly what this work is saying and exhibiting is that what matters is not crime and deviance studies but the larger critical theory on which these must rest (Gouldner in Taylor _et_ _al_., 1973:x).

In addition, the book does provide us with one of the few attempts in criminology to offer a comprehensive critique of existing theoretical approaches to crime. Nevertheless, it fails to progress very far beyond those approaches.

Several of the themes laid down in The New Criminology were extended further in a follow-up book, Critical Criminology, edited by the same authors. For example, in their introduction to Critical Criminology, Taylor, Walton and Young note that:

> The purposes for doing 'radical deviancy theory' (or critical criminology) have now clarified to the point where the radical deviancy theorist can no longer remain content with demystifying traditional correctionally oriented criminology (Taylor *et al*., 1975:6).

They go on to suggest, therefore, that if criminology is to advance, it "can only advance as radical theory and practice" and, also, that "the only radical approach which does not degenerate merely into moralizing is a materialist one" (Taylor *et al*., 1975:44).

It is by following this line of reasoning that Taylor, Walton and Young "have been forced, logically, to turn for such an analysis (and such a criminology) to Marx" (Taylor et al., 1975:45). In particular, the emphasis in Critical Criminology is placed on Marx's method - historical materialism. For

> It specifies that we should study society as a process, and that, in doing so, we should realize that certain modes or systems have definite limits to their development. It is a uniquely radical method, in that it constantly raises questions of what norms are necessary, when, and under what conditions. Moreover, it enables us to study, for example, the nature of the legal system in terms of its role in relation to a particular mode of production - and to investigate, notably, whether the legal system acts as a fetter on man's development or as a boon. Marx specifically criticizes those who see the law as playing the same general role in all

> societies, refusing in so doing to analyse the particular affects of a given mode of production (Taylor et al., 1975:51).

Essentially, then, what the reader is given in this later publication is Taylor, Walton and Young's endorsement of the potential which Marx's materialism holds for the study of law and crime.

In many respects, the work of Taylor, Walton and Young typifies the initial attempts to fashion a more radical, Marxist approach in criminology. The particular slant or direction advocated in their writing can also be found in works of others. To elaborate, initial work in the area invariably centered around a critical appraisal of existing approaches. Platt (1974), for example, was engaged in a critique of mainstream, liberal criminology, particularly with respect to the domain assumptions and ideological functions of the work of liberal theorists. These included: the unquestioning acceptance of a state or legal definition of crime[3]; an adherence to reformism, particularly in terms of the belief that "it is possible to create a stable and humanitarian system of criminal justice under the present economic and political arrangements" (Platt, 1974:2); and a rejection of macroscopic theory and historical analysis in favor of an emphasis on behaviorism, pragmatism and social engineering.

Similarly, Chambliss (1975 and 1976) focussed on the inadequacy of consensus-oriented assumptions about the nature of social order found in existing approaches (see also: Quinney, 1973). He argued that laws do not emerge from a "community of consensus," but rather "(a)cts are defined as criminal because it is in the interests of the ruling class to so define them" (Chambliss, 1975:152).

---

[3] Objections to the use of a state or legal definition of crime have also been strongly voiced by the Schwendingers (1970). In place of the legal definition, the Schwendingers advocated a more 'humanistic' one, i.e., crime as a violation of human rights. It should be noted, however, that they have since modified their position and now argue for a 'proletarian' definition of crime, i.e., crime as conduct harmful to the objective interests of the working class (see: Schwendinger, 1977).

Several writers have endeavored to invest both crime and law with *political* meaning; focusing on the ways in which criminal law and patterns of law enforcement serve powerful interests and dominant classes in society. Hepburn's work, for example, attempts to demonstrate support for the assertion that:

> . . . the criminal law is used by the capitalist elite to secure and protect its own survival and that the true object of criminal law is that large but powerless segment of society whose oppression and inequality are necessitated by the demands of a capitalist society (Hepburn, 1977:78).[4]

Moreover, in focusing on the political nature of crime, there has also been a tendency to view the criminal offender as a potentially *progressive* force in society. Quinney, for example, states:

> Crimes of accommodation and resistance thus range from unconscious reactions to exploitation, to conscious acts of rebellion. . . . Finally, the crimes may eventually reach the ultimate stage of conscious political action - revolt. In revolt, criminal actions are not only against the system but are also attempts to overthrow it (Quinney, 1977:59).

Quinney has actually been one of the more prolific writers in the area.[5] And in terms of the themes and assertions laid out in his writing, he is also perhaps the most closely aligned of the Marxist criminologists to the work of Taylor, Walton and Young. Like Taylor, Walton and Young, Quinney has been an ardent critic of the positivistic mode of thought, castigating positivists for, among other things, the supposed 'value freeness' of their activity, their lack of reflexivity, and their unquestioning acceptance and support of the status quo (Quinney, 1975:178-84). Quinney, too, has adhered to a 'socialist vision' of a 'crime-free society': "Only with the collapse of capitalist society and the creation of a new society, based on socialist principles, will there be a solution to the crime problem" (Quinney, 1975:199). But while he is similarly intent on developing a 'Marxist theory of crime control in capitalist society' (Quinney, 1975:182), it should be noted that Quinney does diverge from Taylor, Walton and Young in that he attempts to realize this objective by means of a 'critical philosophy':

---

[4] See also: Chambliss, 1975; and Quinney, 1970.

[5] See, for example: Quinney, 1970, 1973, 1975, 1977 and 1978.

> A critical philosophy is one that is radically critical. It is a philosophy that goes to the roots of our lives, to the foundations and the fundamentals, to the essentials of consciousness . . . The operation is one of demystification, the removal of myths - the false consciousness - created by the official reality. Conventional experience is revealed for what it is - a reification of an oppressive social order . . . The liberating force of radical criticism is the movement from revelation to the development of a new consciousness and an active life in which we transcend the established experience. A critical philosophy is a form of life (Quinney, 1975:188).

The discussion thus far may be summarized as follows: attempts to develop a Marxist criminology were initially focused on a critique of mainstream approaches in the discipline, especially with respect to the kinds of assumptions on which these approaches were grounded. The one assumption which came under particular scrutiny was that which held consensus to be the basis for social order in society.

In response to the perceived shortcomings of mainstream criminology, several of the radical practitioners saw the need to emphasize the role of power in the creation and enforcement of criminal law. This, in turn, led some of them to emphasize the political nature of crime. Crime came to be seen as a product of current power differentials and conflicting world views. In other words, rather than viewing criminal acts as outcomes of the pathological or abnormal traits of individual offenders, criminologists intent on developing the Marxist approach tended to view crime as created by powerful segments of the society who were sanctioning certain behaviors in the attempt to protect their own interests and values.[6]

Moreover, such a perspective demanded an analysis of structural variables as they relate to the definition of crime and the enforcement and administration of criminal law. Indeed, it was here that the relevance of the Marxist perspective was seen to be most pronounced, since Marx's historical materialsim provided the method by which such an analysis could be undertaken.

B. Critiques of the Marxist Approach in Criminology

Turning to the criticisms lodged against this approach, the value or utility of a Marxist criminology has been - and continues to be - a matter of considerable debate. Moreover, it is a debate involving a variety of different interests and perspectives. There are those, for example, who have denied the possibility of a Marxist theory of law and crime. Hirst, for one, states:[7]

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[6] Statements such as these reflect the similarities between Marxist criminology and the labelling perspective on deviance. Nevertheless, the two approaches also have very marked differences, the most significant one relating to the source of power differentials. For the Marxists, the political nature and the creation of crime is inherently rooted in the class-based nature of social organization. Labelling theorists, on the other hand, working within the symbolic interactionist tradition, have tended to take a liberal-pluralist view. As such, 'power' is expressed along a number of lines: old versus young, men versus women, whites versus racial minorities, and so on. See: for example, Becker 1963:17.

> There is no 'Marxist theory of deviance', either in existence, or which can be developed within orthodox Marxism. Crime and deviance vanish into the general theoretical concerns and the specific scientific object of Marxism. Crime and deviance are no more a scientific field for Marxism than education, the family or sport. The objects of Marxist theory are specified by its own concepts: the mode of production, the class struggle, the state, ideology, etc. Any attempt to apply Marxism to this pre-given field of sociology is therefore a more or less revisionist activity in respect of Marxism: it must modify and distort Marxist concepts to suit its own pre-Marxist purpose (Hirst, 1972:20).

What must be recognized here, however, is that Hirst adheres to a particular 'reading' of Marx: the structuralist Marxism of Althusser (1970). And this particular interpretation is one which denies the authenticity of any reading other than its own.

Structuralist Marxism argues that, because the concept of 'alienation' is eliminated from Marx's later writing, there is a break in continuity between Marx's earlier (idealist) and later (materialist) works. Marx's earlier works are discredited to the point that they are relegated to mere 'metaphysical speculation', and emphasis is placed on the later works with a view to their reformulation in modern structuralist terms.

Structuralist Marxism also attempts to demonstrate the impossibility of isolating social factors (such as 'law' and 'crime') in Marxism. In essence, superstructural forms are decomposed into the economic base from which they originated (c.f. Spitzer, 1980). Stated in different terms, it is a position which asserts that Marx actually instigated a revolution in philosophy by making the structure of the whole ultimately responsible for the character and development of any part.

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[7] See also: Mugford, 1974; and Bankowski, Mungham and Young, 1977.

The distinction made between the "young Marx" and the "older Marx" is one which has been disputed and discredited by a host of Marxist scholars.[8] More significantly, however, is the fact that disagreement also exists with respect to the emphasis on the "structure of the whole" and its implications for the analysis of any "part". To quote Ollman:

> On my view, in attempting to reconstruct the whole from each major vantage point, Marx is erecting - if we insist on this expression - as many structures of the whole as there are major units in his analysis. The whole grasped as the interrelated conditions necessary for the existence of capital has a somewhat different structure from the same whole grasped as the interrelated conditions necessary for the alienation of workers, and so on. The difference in where we begin leads to a difference in perspective; in the size and importance of other factors, and in the relevance of the various ties between them (Ollman, 1971:266-67).

Spitzer (1980:172) has also argued that not only does such a perspective support "a kind of 'knee-jerk' economism which is acceptable to only the most vulgar of materialists, it also introduces a rigidity into Marxist theory which is both misleading and unnecessary." Similarly, with specific reference to criminology, Greenberg has pointed out that, although Marx did not have a theory of crime, he did write about crime on a number of occasions. Even so,

> . . . if Marx and Engels had never said a word about crime, it would not follow that a Marxian criminology is impossible. If one starts from the proposition Marxist theory was still incomplete

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[8] See, for example, Meszaros 1970:Chapter 8 and Colletti 1972:45-110.

> when Marx and Engels died, then it is surely legitimate to extend and develop the theory to deal with new phenomena. One could then use the concepts and methods of reasoning found in Marxist texts without turning them into sacred books (Greenberg, 1981:20-21).

While the intention here has not been to digress into a discussion of which reading of Marx is more "correct" than another, the point which must be emphasized is that structuralist Marxism is but one way in which Marx's works have been interpreted. Given the predominance of other readings or interpretations of Marx's work - ones which accommodate and encourage the study of law and crime - the development of a Marxist criminology appears as a plausible undertaking.

Apart from those who deny the very possibility of a Marxist criminology, there are others who maintain that a Marxist criminology is incapable of making any real contribution to the discipline. Klocklars (1979:478-79), for example, has recently suggested that Marxist criminology is at "a point at which its capacity for contribution is exhausted, and where it must confront the reality of its own theoretical and empirical poverty or wither and die." Others have depicted work in the area as 'sentimental' (Toby, 1979) and as 'irresponsible' and 'morally debilitated' (Nettler, 1974 and 1978). Invariably, however, this form of criticism (and the responses given to it) simply reduces the question of the viability of the Marxist approach to the level of an ideological debate.[9] Ericson, for example, in concluding his critique of The New Crimiology, tells us that:

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[9] That differences between Marxist criminology and traditional, mainstream criminology have tended to degenerate into an ideological battle between Left and Right has become most evident in the recent controversy and debate generated by the publication of a special issue of Criminology (vol. 16 no. 4) which was supposedly devoted to recent

> . . . Ian Taylor and his fellow socialists are using an academic forum for political ends . . . Deviant action, and criminology as the study of deviant action, are both to be used as instrumental means in overpowering those who get in the way of the socialist quest (Ericson, 1974:359).

Similarly, Adler and Warr (1978:24) argue that Quinney's work "smacks more of ideology than of testable theory."

Yet, one could argue that to denigrate Marxist criminology because it is "ideologically ridden" is really an empty charge. All perspectives have an ideological component to them with the potential to distort (c.f. Greenaway, 1978). As Michalowski states:

> Marxism is social theory. It is neither more nor less ideological than any other social theory. To dismiss Marxist criminologies as "ideological" is an effective, but inauthentic, way of not actually having to refute their assertions if they are felt to be incorrect (Michalowski, 1979:563).

It would seem, therefore, that this form of criticism accomplishes very little in the way of advancing criminology, be it Marxist or otherwise.

Apart from the more 'skeptical' forms of criticism, there does exist a brand of criticism of Marxist criminology which is more 'positive' or 'constructive' in nature. It attempts to point out where Marxist criminologists have gone astray and how their work could be strengthened or improved. Spitzer, for example, maintains that the difficulties encountered by the 'new criminologists' stem from the fact that they 'started off on the wrong foot'. In other words,

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works within radical criminology. Several radical criminologists have claimed the special issue was not a 'balanced' and 'principled' representation of radical criminology, and have criticized it for its "red-baiting innuendoes" (see: Crime and Social Justice, Spring-Summer, 1979 and Winter, 1979; Criminology, November, 1979). Moreover, the decision by Inciardi, the journal's editor, to publish an edited book on radical criminology, was met by an informal boycott by several radical criminologists who were asked to contribute (see; Inciardi, 1980:10-11).

> Because it was so anxious to break free from the suffocating assumptions and methods of the "old criminology," the focus, shape, and theoretical directions taken by the new criminology were as much a product of what it was trying to leave behind as what it was looking toward (Spitzer, 1980:173).

Indeed, there has been a marked tendency for Marxist criminologists - especially in their initial formulations - to define their approach based upon a simplified version of the "worst" that traditional approaches had to offer. For one, instead of viewing crime as 'innately pathological', deviance came to be seen as 'innately healthy'. For another, in place of the 'value-free' stance attributed to positivism, commitment was made to 'Praxis' and a socialist vision of a crime-less future. Undoubtedly, such formulations raise questions relevant to the future direction of the Marxist approach in criminology. Perhaps the most significant of these is: how true to the Marxist perspective have such formulations been?

As noted previously, Marxist criminologists endeavored to combat the correctionalism of existing approaches and, instead, highlighted the political factors involved in the delineation of 'who is criminal' in society. What resulted was the view that deviance may consist of politically motivated acts. In other words, there emerged an image of the criminal as a product of an informed 'class consciousness'. But, as Hagan has noted, such an approach could be described as both 'useful' and 'utopian':

> On the one hand, it alerts us to the possibility that some behaviors (e.g. disorder offences, political crimes, and some property offences) may be called deviant or criminal because they are offensive or threatening to privileged segments of society. On the other hand, to assume all acts of deviance, particularly the

> most serious (e.g., murder, rape and child abuse) are justifiable artifacts of a politically meaningful lifestyle is utopian (Hagan, 1977:12).

The difficulties encountered with attributing crime and deviance to 'class conscious' motives become quite apparent when one considers the crimes of the powerless segments of society, specifically, acts of violence which are perpetrated by individuals against members of their *own class*. As Hall and his colleagues have commented:

> There is a political position that suggests that *anything* which disrupts the social order or even tenor of bourgeois life is a *good thing*. It is a tenable position, but it is not ours. Apart from anything else, no existing social order that we know of has ever been changed by the exploits of individuals ripping off other individuals of their own, much-subordinated, class (Hall *et al*., 1978:183).

Rather than viewing acts of interpersonal violence as 'inarticulate acts of struggle against the existing order', it would seem more reasonable to conceptualize them as an *expression* of that order (c.f. Currie, 1974). That is, rather than transcending the social order, they mirror and reproduce the competitive, manipulative and exploitative character of the society. Otherwise, to endow crime with some sort of "revolutionary potential" would merely serve to "both remove the criminal from the structural sources of his crime and confuse isolated acts of rebellion, 'striking out', and 'putschism' with purposive collective work" (Spitzer, 1980:180).[10]

Clearly, Marxist criminologists have done well to highlight the political factors involved in the study of crime. Nevertheless, while it is one thing to argue that crime is *political* in nature, it is quite another to infer political motives to those who engage in criminal and deviant activity. As Greenaway has cautioned:

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[10] In this regard, we would do well to remember that, for Marx, the class which represented the most fundamental threat to capitalism was not the "criminal class," but the *proletariat*.

> . . . for a social scientist to contend that virtually all acts - inlcuding making, breaking and enforcing rules and laws - have "political meaning" does not necessarily imply that all actors consciously pursue political ends. To say, as the new criminologists suggest, that all deviance, for example, has political meaning is not to say that deviants are class-conscious, politically motivated actors whose purposes should attract our sympathy (Greenaway, 1978:232-33).

In other words, it is possible to emphasize the political nature of crime without having to imply certain motives - political or otherwise - on the part of the criminal actor.

Marxist criminologists have been very critical of the use of empirical research by "bourgeois criminologists." They have claimed that the positivistic strains in traditional approaches have served as a rationalization in that, by professing to be blessed with the "gift of objectivity," traditional criminologists have bypassed any moral responsibility for their actions. Moreover, positivism, by virtue of its focus on the criminal actor, is viewed as the "root cause" of the individualistic and therapeutic treatment of offenders (i.e., correctionalism). Because of their discontent with positivism, several Marxist criminologists have denounced the positive method in its entirety. In its place, they have substituted a commitment to 'Praxis'.[11] There are three related points to be made here.

First of all, that Marxist criminologists have rejected the use of the positive method becomes perplexing when one considers the extent to which positivist elements prevail in Marx's own thought. Marx, for example, placed a heavy emphasis on the importance of realizing the empirical conditions that relate to specific historical situations. In Capital, Marx compared his work to that of a physicist in a laboratory and declared his task to be that of discovering the 'hidden laws of motion' in capitalist society (Marx, 1967:7-11). Elsewhere, he suggested that "natural science will one day incorporate the science of man, just as the science of man will one day incorporate natural science: there will be a single science" (Marx, 1964:164).

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[11] Platt (1974:5) states: "A radical commitment to practice consists of "practical critical activity" and participation in ongoing political struggles." See also: Taylor et al., 1975:24-28.

Second, it would seem that Marxist criminologists, like many other sociologists, have been confused by the concepts of 'value-free' and 'value-relevant'. As Lowry states:

> In reality, all good social research is both value free and value relevant, especially research that deals with applied knowledge and an orientation toward social change. In other words, the polarized belief that all social scientists can or must choose either complete value freedom or total value relevance is misleading (Lowry, 1974:289).

By viewing these elements as mutually exclusive, prevailing approaches have avoided any attempt to resolve the problem of how one can be committed to relevant social change while remaining "value-free." Exponents of these approaches have merely opted out of this dilemma by clinging to the assumptions of pure, basic, value-free research. In the same manner, Marxist criminologists by stressing the need for complete, total and continuous value involvement, have merely perpetuated this false polarity. Rather than "taking sides" in such a debate, it would seem more profitable to determine how social research, that is, research that utilizes scientific controls, rigorous data collection techniques and value-free methods of testing findings, could be employed to achieve desired social change (c.f. Comack Antony, 1980).

Third, this idea of 'Praxis' - in the Marxist usage of the term - does imply that a totally detached or objective view of society is impossible. It does not follow from this, however, that all social science has to be 'engaged' in any direct sense. What does follow from the idea of 'Praxis' is that the moral and political assertions as to how society is organized should be examined; that the consequences of a given historical situation should be explored in terms of their relevance for the future direction of human activity (c.f. Birnbaum, 1971:126-28). Here again, and it cannot be over-emphasized, Marx understood well the need for rigorous empirical analysis of social forces and historical conditions in order to enact any measures of social change.[12]

> For Marx, knowledge of the future was always problematic, prediction being contingent upon the interaction of a host of variables. And this, for Marx, was the role of science - to isolate and subject to rigorous examination those social variables which in their 'gestalt' constitute a historical mode of production. This knowledge must be rigorous, empirical and exact; and it must be 'value free' (Denisoff and McQuarrie, 1975:110).

Hence, while Marxist criminologists may be correct in criticizing traditional criminologists for their failure to consider the broader social and political implications of their work, to reject positivism outright and attempt to replace it with a 'value-engaged' commitment to 'Praxis' would seem to be excessive, particularly in light of Marx's own stance on the matter.

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[12] In this context, the idealism of Quinney's 'critical philosophy of legal order' (1973) seems misplaced. In claiming that "(o)ur selves are transformed in the course of theorizing," Quinney - contrary to Marx - presumes that "freedom" can be achieved merely by the negation of the present. Obviously, his call for a 'critical consciousness' must be viewed in the context of the influence which the theoretical position of the Frankfurt School has had on his work. Nevertheless, the disparities between Quinney's assertions and the Marxist perspective must be noted.

Another aspect within Marxist criminology which needs to be considered is the socialist vision of a crime-free society which has been put forward. To say that criminal definitions are constructed and applied by powerful segments in society does not lead to the conclusion that by equalizing this power and eliminating class inequality, all crime would disappear. In other words, a Marxist criminology does not automatically suggest that the revolution of the subordinate class to reach a 'classless' society would generate a 'crimeless' society. This is so for at least two reasons. First, if one can assume that human action is purposive and meaningful, and that human behavior is intentional and goal-oriented, then it follows that individuals will always have the ability to choose whether a specific rule will be adhered to or broken. Second, if one assumes that conflict is an endemic feature of all societies, then there will always be the potential for a conflict of interests to erupt between certain individuals or groups in society.[13] As Greenberg has noted:

> In view of the persistence of crime in state and market socialist economies, it is plausible to assume that all societies contain contradictions that will generate disputes involving behavior that will be perceived as sufficiently threatening and sufficiently reprehensible to warrant punitive intervention and that in modern societies this intervention will at least some of the time take the form of criminalization. Indeed, under socialism, the expansion of the public sphere into traditionally private realms may create a strain

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[13] It should be emphasized that such conflicts need not be irreconcilable as some are, for example, under capitalism. They may, for instance, simply reflect 'differences of opinion'.

> toward an expanded use of the criminal sanction (Greenberg, 1976:619ff).

It should be emphasized, however, that to recognize that there will always be crime is _not_ to say that it will be of the same nature as crime is currently defined. Specifically, crime _need not_ be determined along class lines nor by the inequality which exists between certain groups in society. It seems far more plausible to assume that crime will be present in _any_ socially differentiated society, with the amount and nature of crime dependent upon the particular social structure of the society.[14]

Perhaps the most significant aspect of Marxist criminology - in terms of how accurately it depicts a _Marxist_ analysis of crime - is that of the linkages which are made between the law and the capitalist system. There are a number of observations which could be made here. For one, there has been a tendency for Marxist criminologists to assign _too much responsibility_ to the criminal law in capitalist society. This is reflected, for example, in Hepburn's (1977:78) statement that the criminal law is used "to legitimize and institutionalize the existing property relations." Similarly, Quinney (1975:195) has stated that the preservation of the existing capitalist order "is accomplished ultimately by means of the legal system." If anything, one could argue that these writers have over-estimated the _effectiveness_ of the criminal law. For the criminal law simply does not at all times and in all places "serve as a mechanism for the forceful and violent control of the rest of the population" (Hepburn, 1977:78). This is not to suggest, however, that the criminal law is incapable of functioning as a coercive force. As Steinert has noted:

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[14] It is in this respect that the statement 'capitalism causes crime' can be said to be true. For the historical development of the capitalist system transformed the criminal law, the patterns of crime and even the methods of crime control. Obviously, however, if one uses 'cause' to mean that only in capitalist societies does one _find_ crime, then the statement is false (c.f. Greenberg, 1981:23).

> Criminal law certainly is a means of repression, but a second-order and rather marginal one in a functioning capitalist system. Instead of going on to describe its abstract functions, we need to concentrate on a historically specific delineation of the functions it can take over in certain situations. It certainly played a part in the transition from feudalism to capitalism and again in the process of industrialization. It may be that it becomes important whenever a crisis of the system arises . . . (Steinert, 1977:440).

For another - and related to the above - Marxist criminologists have generally tended to present an over-simplified view of Marxism. Quinney's conception of 'class' is a case in point. He defines the 'ruling class' as composed of:

> (1) members of the upper economic class (those who own and control the means of production) and (2) those who benefit in some way from the present capitalist economic system (Quinney, 1973:55).

This definition is much more vague and inclusive than is customarily found in Marxist thought. We are not told how one is to determine those people 'who benefit in some way' from the capitalist system. In addition, such a definition fails to reflect any appreciation for the complex issues that have been brought up in the literature on class (and their relevance for the study of crime and law).

The tendency to present an over-simplified view of Marxism is further reflected in the conspiratorial nature of the relationship which is drawn between the legal system and the capitalist class. One of Chambliss' propositions, for example, reads as follows: "Members of the ruling class will be able to violate the laws with impunity while members of the subject classes will be punished" (Chambliss, 1975:152; emphasis added). Apart from distorting the Marxist perspective, claims such as the above "are devoid of specifics that reveal either the composition of this ruling class or the nature of social power exercised by that shadowy group" (Gibbons, 1979:201). In other words, it would appear that, to a large degree, Marxist criminologists have adopted the rhetoric of Marxism, while neglecting its substance. That is, while statements such as "law is a tool of the ruling class" (Quinney, 1975:192) may be a starting point for a Marxist criminology, they are far too simplistic and reductive to stand by themselves.

Evidently, then, what one does not find in Marxist criminology is a systematic analysis of capitalist society or an attempt to demonstrate how Marxist concepts, premises and ideas could be utilized in an analysis of crime under capitalism.[15] Many of the statements made rest on faith rather than an elaboration of how and why the law may function as it does in capitalist society. It would seem, therefore, that what is missing from Marxist criminology is the attempt to ground the analysis of law and crime in a broader understanding of capitalist society. As Hall and his colleagues state:

> General questions of law and crime, of social control and consent, of legality and illegality, of conformity, legitimation and opposition, belong, and must ultimately be posed unambiguously in relation to, the question of the capitalist state and class struggle (Hall et al., 1978:195).

C. Promises and Prospects of a Marxist Approach for Criminology

On the basis of the above discussion, it could be argued that

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[15] It is significant that Taylor, Walton and Young (1973), in utilizing Marx, turned to his philosophical anthropology rather than his political economy (c.f. Greenberg, 1981:12).

Marxist criminologists have failed to present a very 'accurate' picture of Marxist thought. Many of their formulations could be described as "errors of excess" (c.f. Spitzer, 1980), deriving more from a dissatisfaction and subsequent rejection of traditional criminology than from a sincere attempt to construct a criminology that would do justice to the Marxist perspective. None the less, Marxist criminology, as it is presently constituted, does possess certain features which would seem to be advancements over what existing approaches have to offer. Furthermore, what emerges from the various formulations within Marxist criminology is the realization that criminologists can no longer afford to view their discipline as completely separate and distinct from the wider issues and concerns which have sparked the curiosity of sociologists, political scientists and economists alike. For it has become increasingly clear that to understand the phenomenon of crime requires an investigation into the wider social, political and economic factors which impinge upon it.

Given the advancements made by Marxist criminologists, and an awareness of some of the problems encountered in their formulations, the question which emerges is: how can a Marxist criminology be advanced? That is, _in what direction should work within this area proceed in order to heighten the explanatory power of the Marxist approach to crime?_ One of the most serious shortcomings of the work of Marxist criminologists has been a failure to couch their assertions in a broader understanding of the intricacies of capitalist society. In this regard, several writers (Wolfe, 1971; Balbus, 1973; Hall _et al_., 1978) have maintained that a Marxist theory of law and crime will be severely limited as long as there is a failure to situate it within a broader theory of the nature and role of the state in capitalist society. In other words, it can be argued that it is necessary for Marxist criminologists to 'take a step back' and focus, not soley on the legal system, but on the larger mechanism in which it operates: the capitalist state. Following this reasoning, then, it is apparent that a necessary precondition for a Marxist theory of law and crime is a coherent Marxist theory of the state.

In the next chapter, this course of action will be pursued. More specifically, the discussion will focus on the current state of theorizing in Marxism with respect to the nature and role of the state in capitalist society.

Chapter Three

Theories of the State

Traditionally, Marxist thought has not concentrated on the formulation of a coherent 'theory of the state', that is to say, the state has typically not enjoyed a position of dominance in Marxist analysis (c.f., Miliband, 1977). Marx himself never attempted a systematic study of the state, although he did consider it to be a subject worthy of study at a later date. His principal theoretical object was the capitalist mode of production. As such, in Capital, Marx's main work, the focus is primarily on the economic level, his aim being to develop a materialist critique of bourgeois society. Other levels, such as the state, enter into the analysis in Capital, but only insofar as they effect the economy. Thus, for example, Marx analysed state intervention into the economy in the nineteenth century in the form of the ten-hour day legislation and the Factory Acts.

Of those following Marx, it is Lenin who stands out as being the most concerned with the state. But Lenin's purpose was more directly involved with political practice. In State and Revolution, for example, Lenin developed a 'theory of the state', but it was one which holds the problem of the transition from one form of society (capitalism) to another (socialism) in the foreground.[1]

It has really only been in recent times, therefore, that a coherent 'theory of the state' has been defined as an explicit task by

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[1] See also Chang (1965), for a similar kind of analysis. Chang follows Lenin's outline closely.

Marxist theorists. Generally speaking, theorists who have been working toward this end have all made the fundamental observation that the state in capitalist society is one which broadly serves the interests of the capitalist class. This observation is usually placed in the context of Marx and Engel's passage that "The executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie" (Marx and Engels, 1975:82). As such, the questions typically posed are: Why does the state serve the interests of the capitalist class? How does the state function to preserve and expand the capitalist system?

Yet, while Marxist theorists may be said to hold in common a similar starting point for their theorizing on the state, the analyses and formulations which they have gone on to manufacture have not been so similar. The initial attempts at theorizing on the state have tended to draw heavily on the varying traditions in Marxist thought. Consequently, there exists differing viewpoints on the particular nature and role of the state, viewpoints which reflect different emphases, levels of abstraction and degrees of sophistication. Moreover, these viewpoints, while not necessarily irreconcilable, have created considerable debate and controversy in the literature to the extent that much of what has been written concerning the Marxist view of the state has taken the form of a polemic against one or another perspective.

In this regard, two perspectives in particular have stood out in the literature, one being the 'instrumentalist' position and the other the 'structuralist' position. The most visible representatives of these positions have been Ralph Miliband and Nicos Poulantzas respectively. Given the prominence of these two positions and their significance with respect to realizing a Marxist theory of the state, it becomes worthwhile to devote attention to the specific ways in which both Miliband and Poulantzas have posited the linkages between the state and the capitalist class and the manner in which they have explained the relationship between the state and capitalist society. In the discussion which follows, therefore, Miliband's instrumentalist position and Poulantzas' structuralist position on the state will be laid out with a view to clarifying the discrepancies between them. Additionally, by critically appraising the merits and deficiencies of each of these approaches, we will then be in a position to establish the requirements for a more coherent Marxist 'theory of the state'.

A. The Instrumentalist Position

The first major attempt to explicate a full 'theory of the state' came with the publication of Ralph Miliband's book, The State in Capitalist Society, in 1969.[2] The main thrust of the book is a critique of the liberal view of the state and society. As Miliband states in his opening chapter:

> One of the main purposes of the present work is in fact to show in detail that the pluralist-democratic view of society, of politics, and of the state in regard to the countries of advanced capitalism is in all essentials wrong - that this view, far from providing a guide to reality, constitutes a profound obfuscation of it (Miliband, 1973:6).

Liberal assumptions about the nature of social order and the purpose of the state in modern societies have dominated contemporary

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[2] This is actually an incorrect statement, as Poulantzas' Pouvoir politique et classes sociales was published in France in 1968. However, Miliband's book is generally taken to be the initiator of the instrumentalist/structuralist debate, especially since it sparked the exchange between the two theorists in the New Left Review.

Western political thought. Considering the impact which the liberal position has had on theorizing on the state-society relationship, it is advantageous at this point to digress for a moment and consider this position in some detail.

Modern liberal theory posits an image of society founded on pluralistic and consensus-oriented assumptions about the nature of social order. To elaborate, society is seen to be composed of a plurality of competing interest groups, with power diffused and scattered among them. No one group or segment of the population is excluded from the exercise of (political) power. And no one group can gain a monopoly over that power. Consequently,

> Because one center of power is set against another, power will be tamed . . . because minorities (can) veto solutions they strongly object to the consent of all will be won in the long run . . . Because constant negotiations among different centers of power are necessary . . . leaders will perfect the precarious art of dealing peacefully with their conflicts (Dahl, 1967:24).

Such a view, then, is one which acknowledges the conflictual nature of social relationships. Nevertheless, this conflict is conceptualized in a particular manner in that, in the liberal view of politics, conflicts exist in terms of 'problems' which need to be 'solved'. Conflicts do not run very deep, and can even act as a stabilizing and 'functional' force in society (c.f., Miliband, 1977:17). In essence, the liberal view incorporates the notion of 'conflict' into its image of society, but conflict is translated to mean 'institutionalized conflict' or competition for similar goals within the same system. For, above all, liberal theory assumes a consensus on dominant values and political organization exists among the members of society.

Society, however plural, tends inevitably toward stability and harmony (c.f., Horton, 1966).

This emphasis on stability is also reflected in the liberal view of social organization. For liberal theorists view human societies as social systems, systems made up of interlocking sets of institutional arrangements: the economic, the political, the legal, the religious, and so on. Each of these institutional arrangements carries out a particular function. And each is composed of a hierarchy of positions along which tasks are distributed. While an institutional sphere may be analytically separated out in terms of the particular function it performs, all of them come together to form a coherent 'whole' such that there exists a functional interdependence between the various parts.

This image of society and social organization informs the liberal view of the state, since the state has been interpreted by liberals as an institution established in the interests of society as a whole for the purpose of mediating and reconciling social conflicts (c.f., Sweezy, 1942). In effect, the state functions "to deliberate on the inconsistencies that naturally arise in such a complex arrangement, to smooth out these wrinkles with legislation, and to adjudicate between conflicting claims of different sectors of the society" (Marchak, 1975: 14). The state, therefore, is the co-ordinating body in society, its main purpose being the maintenance of social order. And - as liberal theorists take great pains to emphasize - the state carries out this purpose in a democratic fashion.

'Democracy' has actually become a catchword for modern liberal thought. But, as with many other such concepts, it is one which has taken on a particular meaning. Specifically, 'democracy', in the liberal verbiage, is used to refer to a political method by which governments can be chosen and authorized (see: Schumpeter, 1942). Consider, for example, Lipset's definition:

> Democracy in a complex society may be defined as a political system which supplies regular constitutional opportunities for changing governing officials and a social mechanism which permits the largest possible part of the population to influence major decisions by choosing among contenders for political office (Lipset, 1960:45).

The democratic state, as with other institutional sectors of the society, has an occupational hierarchy. Those who occupy the positions at the top, the ones with the most authority and responsibility, are the political leaders or "elites." This is not to say, however, that the political elite is "all powerful." Quite the contrary, the state or government, according to liberals, is a "responsive" one. For the characteristically democratic element in this political method is the competition of leaders for the votes of the people at election time (c.f., Pateman, 1970). Consequently, the responsiveness of leaders to the electorate is ensured by the sanction of loss of office. Moreover, everyone is free, in principle, to compete for the positions of leadership. Hence, the distance between the elites and the rest of the population is effectively reduced. As Aron states:

> . . . democratic societies, which I would rather call pluralistic societies, are full of the noise of public strife between the owners of the means of production, trade union leaders and politicians. As all are entitled to form associations, professional and political organizations abound, each one defending its members' interests with passion and ardour. Government becomes a business of compromises. Those in power are well aware of their precarious position. They are considerate of the opposition because they themselves have been, and will one day again be, in opposition (Aron, 1950:110-111).

In essence, then, the political elites are merely the "managers of government," subject to the wishes of the majority and acting in their interests. Since all of the people possess the same, single vote, the government does not - indeed, cannot - represent the interests of only one segment of the population. Political equality prevails, therefore, both in terms of universal suffrage (one person, one vote) and in the equality of opportunity of each individual of access to influence over decision makers through the electoral process.

For liberals, social classes exist in society, but they are seen as one of the many possible interest group formations. For although a social class may possess more political resources than some groups, this is counterbalanced by the franchise and the capacity of groups who are in a minority position to mobilize public opinion and influence the political elites. Thus, inequalities may be present in the society, but their existence is usually attributed either to individual differences or to imperfections in the system (c.f., Marchak, 1975).

Liberal theory, therefore, presents a picture of society which is both 'good' and 'just'. The society is one in which individuals enjoy "universal suffrage, free and regular elections, representative institutions, effective citizen rights . . . and both individuals and groups take ample advantage of these rights under the protection of law, an independent judiciary and a free political culture" (Miliband, 1973:4). Since, in effect, there are no social classes in society, the state is not a means of promoting class interests. In the liberal view, the state is a neutral arbiter - a democratic mechanism for channelling and adjudicating competing interests in society.[3]

Various elements of the liberal position on society and the state have suffered critical treatment by a number of writers. Bottomore (1964), for one, has criticized liberal theorists for presenting another, albeit 'masked', version of elite theory. MacPherson (1977) emphasizes the point that modern liberal theorists, following Schumpeter, have been content with defining democracy as strictly a 'political method'. That is, democracy has been narrowly conceived as a "democracy of elections" as opposed to its original, broader meaning of a "levelling principle." In a similar vein, Marchak (1975) has taken the liberal position to task for its supposed "representative" nature, arguing that to the extent that the economic sphere is not subject to the same electoral process, then the government cannot be said to be "representative" of the majority in society. But it is with Miliband that we encounter the attempt to demystify the liberal position through a Marxist critique. Miliband endeavors to demonstrate, using empirical data from a variety of advanced capitalist countries, that liberal theorists have "gotten their facts wrong" and, more importantly, that a Marxist analysis offers a more powerful explanation of the nature and role of the capitalist state.

Miliband's critique of the liberal position centers, first of all, on the notion of a 'plural elite' and, second, on the liberal idea of the 'neutral state'. He begins his discourse (with the use of comparative data on England, France, Germany, the United States and Japan) by establishing the existence of a dominant class in advanced capitalist societies - a class "possessed of a high degree of cohesion and solidarity, with common interests and common purposes which far transcend their specific differences and disagreements" (Miliband, 1973: 45). From here, the analysis shifts to a focus on the nature and role of the state, and the extent to which this dominant class can be said to be a 'ruling class'.

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[3] Because liberal theorists view the state as a 'neutral force' in society, it is not perceived as an important focus for analysis. To paraphrase Easton, 'the state is not a concept that serves to bring together political research' (1953:106). As such, liberal theorists have focused their attention more on issues such as voting and voting behavior, political mobilization, the conditions for political stability and so on. This serves to explain, in large part, the lack of attention which has traditionally been given the state in Western political thought.

Miliband, in his discussion of the state, remarks that "'the state' is not a thing, that it does not, as such, exist. What the state stands for is a number of particular institutions which, together, constitute its reality, and which interact as parts of what may be called the state system" (Miliband, 1973:46). Accordingly, Miliband identifies five elements that go in to make up the 'state system': the government; the administration; the military, paramilitary, security and police forces; the judiciary; and the units of subcentral government. It is within these various institutions where 'state power' lies, and it is through them that this power is wielded by the individuals who occupy the leading positions. Moreover, these individuals constitute what Miliband refers to as the 'state elite' (see: Miliband, 1973:46-50).

Miliband then demonstrates that the ruling class does in fact rule by showing the linkages between the state elite and the dominant class or, in other words, that those individuals who possess political power are drawn predominantly from the dominant class. This is accomplished through a 'positional analysis' of the state elite which includes: 1) the class composition of the state elite, that is, their social ties; and 2) specific examples of how state policy is shaped and influenced by members of the dominant class.[4]

The analysis in The State In Capitalist Society offers what is actually a specific interpretation of Marx's superstructural view of the state. For Miliband takes Marx and Engel's formulation in the Communist Manifesto to mean that, apart from "very exceptional circumstances," the state represents "the coercive instrument of the ruling class."

> In the Marxist scheme, the 'ruling class' of capitalist society is that class which owns and controls the means of production and which is able, by virtue of the economic power thus conferred upon it, to use the state as its instrument for the domination of society (Miliband, 1973:23).

Thus, Miliband's position is "instrumentalist" given that the purpose of the state is seen to be that of an "instrument" which is at the disposal of the capitalist class.[5] And the principle support for this view consists of inferring the power of the capitalist class from the class composition of the personnel who hold key roles in the state.

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[4] For a similar kind of analysis see: William Domhoff (1970). Much of the work of Domhoff rests almost entirely on showing the personal/social connections between persons who occupy positions of economic power. For example, a person is considered to be a member of the upper class if: 1) they, their parents, their spouse's parents or their siblings are listed in social registers or blue books; 2) they or their immediate relatives attend any of the listed exclusive private schools; 3) they or their immediate relatives belong to any of the exclusive social clubs; or 4) they or their parents was a millionaire entrepreneur or a $100,000 a year corporate executive or lawyer combined with membership in the above exclusive institutions (1970:21-27).

[5] Sweezy holds a similar 'instrumentalist' position. He posits what he calls a "class domination theory" which, in contrast to the "class mediation theory" of the liberals, "recognizes that classes are the product of historical development and sees in the state an instrument in the hands of the ruling classes for enforcing and guaranteeing the stability of the class structure itself" (Sweezy, 1942:243).

Miliband's analysis has been generally acknowledged as a successful debunking of the liberal view of the state-society relationship. Balbus, for one, states:[6]

> Many of these criticisms, it is true, have been made before, but rarely together in one book and rarely on the basis of such an impressive wealth of comparative data (Balbus, 1971:37).

Moreover, his analysis of capitalist class composition is seen to have certain advantages for an understanding of modern capitalist societies. As Mollenkopf notes, such an analysis has generated a "sociology of the capitalist class" which reminds us that "economic elites have more than civic virtue in mind in their dealings with the state" (Mollenkopf, 1975:245).

Miliband must also be commended for his emphasis on the fact that "the state in . . . class societies is primarily and inevitably the guardian and protector of the economic interests which are dominant in them. Its 'real' purpose and mission is to ensure their continued predominance, not to prevent it" (Miliband, 1973:237-38). In other words, Miliband has sensitized us to the fact that, in capitalist societies, the state is necessarily a capitalist state whose purpose it is to maintain a certain set of relations, that is, capitalist relations.

Finally, Panitch (1977) views one of the more important contributions of Miliband's analysis to be his stress on delimiting clearly the institutions of the state. In one respect, Miliband's discussion of the institutions which make up the 'state system' is significant for what it leaves out, that is, it leaves out political parties, the privately owned media, the church and pressure groups. While these elements form part of the system of power through their contribution to social control and political socialization and political recruitment, they remain autonomous from the state. Moreover, Miliband's emphasis on delineating the institutions of the state also serves to move away from the assumption (which is most prevalent in liberal thought) that 'state power' is synonymous with 'government power'. Such an assumption does not necessarily hold true. As Panitch comments:

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[6] See also: Poulantzas, 1972.

> . . . the extent to which a government effectively controls the power of the State, indeed even the extent to which it can speak authoritatively in the name of the State, will depend on the balance of forces within the various institutions of the State, such as the bureaucracy, the judiciary, and the military, in terms of the classes they represent and the values they hold. This will determine how far governmental power is circumscribed by State power (Panitch, 1977:7).

Nevertheless, while Miliband may be lauded for his critique of the liberal view and certain other elements in his analysis, the 'theory of the state' which he puts forth is not without its problems. For one, as Miliband himself admits (1972), his outline of the theory encompasses only a few pages of the text. We are nowhere presented with a systematic elaboration of the basic premises and assertions which comprise his Marxian theory of the state.[7]

What is perhaps the most significant criticism to be lodged against Miliband's work is that put forth by Poulantzas (1972).

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[7] Miliband responds to this charge by claiming to have already outlined his 'theory of the state' in an article published in The Socialist Register. But a study of this article does not confirm his assertion. See: Miliband (1965).

Poulantzas notes that, in attacking the notion of 'plural elite', Miliband argues that the existence of these elites, far from denying the presence of a ruling class, is actually that which constitutes a ruling class in capitalist societies. What Miliband thereby avoids, according to Poulantzas, is "the necessary preliminary of a critique of the ideological notion of 'elite' in light of the scientific concepts of Marxist theory" (Poulantzas, 1972:241). For what transpires is an analysis which fails to break out of the methodological principles of the 'adversary'. According to Poulantzas, this is manifested in

> . . . the difficulties that Miliband has in comprehending social classes as objective structures, and their relations as an objective system of regular connections, a structure and a system whose agents, 'men', are in the words of Marx, 'bearers' of it - träger. Miliband constantly gives the impression that for him social classes or 'groups' are in some way reducible to inter-personal relations of the members of the diverse 'groups' that constitute the State apparatus, and finally that the relation between social classes and the State is itself reducible to inter-personal relations of individuals composing social groups and 'individuals' composing the State apparatus (Poulantzas, 1972:242).

In other words, by allowing liberal-pluralist political science to determine both the methods and concepts used, Miliband is led ultimately to a reduction of social classes to interpersonal relations. His analysis is therefore limited to revealing the interpersonal relations of individuals composing the state. Hence, "by employing the notions of the adversary to reply to him, one legitimates them and permits their existence" (Poulantzas, 1972:241).

In effect, Miliband, like the liberal theorists he sets out to criticize, views social classes simply in terms of the actions and strategies of individuals and groups. Whereas liberal theorists posit a plurality of groups, Miliband posits the existence of one dominant group - but the social causation remains the same (c.f., Holloway and Picciotto, 1978). Thus, with Miliband, the exercise of state power is reduced to a kind of 'voluntarism' on the part of powerful people. What we are presented with, in fact, is a kind of "conspiracy theory" devoid of any systematic analysis of how the strategies and actions of ruling class groups are limited, particularly in terms of impersonal, structural kinds of constraints. Thus, for example, Miliband's scheme is unable to account for those cases where state action or policy does not comply with the wishes or interests of the ruling class. To cite Gold and his colleagues:

> On a number of occasions, reforms undertaken by the state were opposed by large segments of the business community, as for example, during the New Deal. Even when such reforms are ultimately co-optive, to treat all reforms as the result of an instrumentalist use of the state by capitalists is to deny the possibility of struggle over reform (Gold *et al*., 1975:35).

In a similar vein, Balbus (1971) has argued that Miliband actually presents - not a Marxist class analysis - but a sophisticated version of elite-stratification theory. And the result is a static, ahistorical view of capitalist societies. To elaborate, Miliband starts out with a concept of 'class' which conforms to the logic of a Marxist model:

> The economic and political life of capitalist societies is *primarily* determined by the relationship, born of the capitalist mode of production, between these two classes - the class which on the one hand owns and controls, and the working class on the other (Miliband, 1973:17).

But this two-class model is quickly abandoned, as Miliband devotes the remainder of his discussion to a consideration of the internal composition of the dominant class and the means by which it legitimates its rule.

Moreover, Balbus contends that the evidence which Miliband uses to demonstrate the existence of a dominant class is not dataabout the class structure, but data about the pattern of stratification in advanced capitalist societies. In other words,

> . . . in demonstrating the existence of a ruling class, Miliband has reverted to a social stratification or gradation concept of "class" antithetical to the Marxist dichotomic concept; the criterion of class formation, in short is no longer an attribute or interest held in opposition to another class, but rather the individual's place along a scheme of hierarchical gradations (Balbus, 1971:42).

Consequently, Balbus concludes that since Miliband's ruling class is not operationalized in terms of a contradictory relationship with a subordinate class, the analysis which results is not at all a theory of structural conflicts and changes but rather a static picture of capitalist society (Balbus, 1971:42).

Miliband, therefore, relies too heavily on observable class input into the state and control over policy formation. He fails to identify the systemic constraints or imperatives that can limit class action and, because of this, his instrumentalist position tends

> . . . to ignore the extent to which the demands and interests of the dominant class must take into account the limits of direct manipulation imposed by a historical social formation: internal state structure, state-economy relations, and economic structure (Esping-Anderson *et al*., 1976: 189).

B. The Structuralist Position

The instrumentalist position proffered by Miliband, especially the emphasis which is placed on ruling class manipulation of the state's activities, becomes more pronounced when it is juxtaposed with Poulantzas' structuralist position. For Poulantzas categorically rejects the notion that the state is an "instrument" in the hands of a ruling class.[8] In response to Miliband, he states:

> . . . the direct participation of members of the capitalist class in the State apparatus and in the government, even where it exists, is not the important side of the matter. The relation between the bourgeois class and the State is an objective relation. This means that if the function of the State in a determinate social formation and the interests of the dominant class in this formation coincide, it is by reason of the system itself: the direct participation of members of the ruling class in the State apparatus is not the cause but the effect, and moreover a chance and contingent one, of this objective coincidence (Poulantzas, 1972:245).

Poulantzas' views on the state are most clearly laid out in his book, Political Power and Social Classes, for it is there where he establishes his "regional theory of the political." His method of exposition begins with the assertion of a relative autonomy between the economic and political 'instances' of the capitalist mode of production. While the economic is considered to be 'a determination in the last instance', the political is dealt with as a separate and specific object of science (Poulantzas, 1973:25).

Poulantzas then proceeds with an examination of the class structure of capitalist society and the contradictions inherent in that structure which are rooted in the economy. Specifically, he locates the most crucial contradiction to be in the ever-increasing social character of production versus the continuing appropriation of surplus wealth. This contradiction is seen to pose two complementary threats to the reproduction of the capitalist system. On the one hand, the deepening of the social nature of production marks a threat of working class unity that could potentially invoke the demise of the capitalist system. On the other hand, the continued private and competitive appropriation of surplus marks a threat of capitalist class disunity which poses problems for the containment of the working class struggle.

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[8] It should be mentioned here that in his work Poulantzas disclaims not only the voluntaristic kind of position espoused by Miliband, but also the 'economistic' interpretation which has been given to Marx's works, that is, those writers who consider all other levels of social reality to be mere epiphenomena and thus reducible to the economic level. According to economism, the development of a 'theory of the state' becomes a redundant task since the state is viewed as simply a super-structural repository of economic forces. See: Poulantzas, 1972 and 1973.

For Poulantzas, the state plays a decisive role in mediating this contradiction, since the state structure is viewed as providing the means of reproducing class relations and class domination. He thus defines the state as:

> . . . the instance that maintains the cohesion of a social formation and which reproduces the conditions of production of a social system by maintaining class domination (Poulantzas, 1972:251-252).

With respect to the working class, the state, according to Poulantzas, maintains the political disorganization of the dominated classes by presenting itself as 'the unity of the people-nation' and transforming working class members into 'individuals-citizens'. That is,

> It presents itself as a popular-class-state. Its institutions are organized around the principles of the liberty and equality of 'individuals' or 'political persons'. Its legitimacy is no longer founded on the divine will implied by the monarchial principle, but on the ensemble of formally free and equal individual-citizens and on the popular sovereignty and secular responsibility of the state towards the people . . . The modern capitalist state thus presents itself as embodying the general interest of the whole of society, i.e., as substantiating the will of that 'body politic' which is the 'nation' (Poulantzas, 1973:123).

On the other hand, the state functions to maintain capitalist class unity in that, for Poulantzas, the capitalist state is seen to work on the organization of the dominant classes at the political level. Poulantzas conceives of the bourgeoisie - not as a 'coherent unity' - but as a series of dominant classes of fractions of a class.[9] These class fractions together form what Poulantzas refers to as a power bloc. The power bloc "indicates the particular contradictory unity of the politically dominant classes or fractions of classes as related to a particular form of the capitalist state" (Poulantzas, 1973:234). Phrased differently, the power bloc constitutes 'a complex contradictory unity in dominance'.

Further to this, within the power bloc there exists a hegemonic class or fraction, that is, one class or fraction is seen to hold a hegemonic or dominant role over the others. Poulantzas borrows the concept of 'hegemony' from Gramsci (1971) and uses it in two senses. First, 'hegemony' is used to account for the political practices of the dominant classes and how their political interests are presented as representative of the 'general interest' of the people-nation. The state, as such, is said to be characterized by 'hegemonic class leadership'. Second, 'hegemony' is used to account for how it is possible for a power bloc composed of several politically dominant classes or fractions to function. In other words, the class fractions achieve a unity under the protection of a hegemonic class or fraction. To quote

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[9] With respect to the notion of "fractions," Poulantzas (1973) states that ". . . Marxism establishes distinctions between fractions of a class. Fractions are distinct from simple strata since they coincide with important economic differentiations and, as such, can even take on an important role as social forces, a role relatively distinct from that of other fractions of their class."

Poulantzas:

> The hegemonic class is the one which concentrates, in itself, at the political level, the double function of representing the general interest of the people/nation and of maintaining a specific dominance among the dominant classes and fractions. It does this through its particular relation to the capitalist state (Poulantzas, 1973:141).

As such, the bourgeoisie is seen as experiencing difficulties in their attempts to organize against the dominated classes. The existence of fractions within the bourgeoisie itself, the political organization of the working class, and certain features of the capitalist state (for example, universal suffrage) all serve to aggravate the organizational abilities of the bourgeoisie. Consequently, the state must assume the responsibility, "it takes charge, as it were, of the bourgeoisie's political interests and realizes the function of political hegemony which the bourgeoisie is unable to achieve" (Poulantzas, 1973:284). In this sense, the state acts as the 'political organizer' of the bourgeoisie.

Poulantzas goes on to stress that in order for the state to carry out these functions, and thus maintain class domination, it requires a relative autonomy - not from the structural requirements of the economy - but from the direct manipulation of the state's activities by the dominant classes or fractions. This 'relative autonomy' enables the state to transcend the parochialized interests of particular class fractions and thus ensures that capitalist interests are protected. In this sense, the relative autonomy of the state enables it to work toward the long term interests of the capitalists.[10]

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[10] Poulantzas bolsters his discussion of the 'relative autonomy' of the state vis-à-vis the dominant classes or fractions with reference to Marx's analysis of Bonapartism in The Civil War in France. (See: Poulantzas, 1973:258-262).

In addition, the relative autonomy of the state from the bourgeoisie enables it to maintain the political disorganization of the working class. For this flexibility allows the state to concede certain economic concessions to the dominated classes and thereby contain the working class struggle. On the whole, such concessions - in the form of a guarantee of certain economic interests - "not only fail(s) to threaten the political relation of class domination but even constitutes an element of this relation" (Poulantzas, 1973:191).

In essence, then, in order to take on this 'relative autonomy', the state requires some support from the dominated classes. It requires the 'appearance' of presenting itself as their representative.

> . . . it encourages then, in various ways, to work against the dominant class or classes, but to the political advantage of these latter. In this way it succeeds precisely in making the dominated classes accept a whole series of compromises which appear to be to their political interest (Poulantzas, 1973:285).

In sum, Poulantzas posits a relationship between the state and class relations in capitalist society which essentially views the state structure as determined by the constraints and contradictions inherent in these relations. Poulantzas effectively takes Marx and Engel's passage in the Manifesto and interprets it in terms of the problems inherent in developing state policies and actions which are favorable to the whole bourgeoisie. In contrast to the instrumentalist position, Poulantzas' structuralist perspective moves away from the idea of a 'monolithic' ruling class. By positing the existence of ruling class 'fractions', Poulantzas attunes us to the fact that the ruling class is not at all times and in all cases a 'united whole'. As such, the 'conspiracy theory' bent of the instrumentalist position is replaced with an awareness of the diversity of interests that can exist among capitalist class members.

In addition, by positing the need for a 'relative autonomy' of the state, Poulantzas makes us aware of the fact that, in order for the state to function effectively as a capitalist state, it must, when necessary, overrule the short term interests of the various capitalists. As Marx himself emphasized, capital, with its "unrestrained passion, its werewolf hunger for surplus labour" would destroy its own basis, the labour power of the workers, if it were not for the necessary intervention of the state, acting in the interests of capital in general (although under pressure from the working class) to protect the health of the workers (Marx, 1977;Vol. III:252). Thus, since the state's primary concern is with the reproduction and maintenance of capitalism, the state will at times act against the interests of certain ruling class fractions, even to the advantage of the working class. And to do so, it requires a degree of 'relative autonomy'.[11]

With respect to the response elicited by Poulantzas' work by other Marxist theorists, Miliband, among others, has been one to raise certain objections. In his dialogue with Poulantzas, Miliband seems at times to be most concerned with defending his own position. Nevertheless, one major criticism which he does lodge against Poulantzas is that which relates to the "one-sidedness" of Poulantzas' position. To elaborate, Poulantzas criticizes Miliband for his instrumentalist stance. Yet, as Miliband points out, Poulantzas himself, by dismissing the composition of the state elite, has gone too far in the other direction, such that his perspective amounts to what Miliband has termed a 'structural super-determinism'.

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[11] While Miliband's position is predominantly instrumentalist, he does at one point state that ". . . Marx and Engels assert that 'the modern State is but a committee for managing the common affairs of the whole bourgeoisie'. This has regularly been taken to mean not only that the state acts on behalf of the dominant or 'ruling' class, which is one thing, but that it acts at the behest of that class, which is an altogether different assertion and, as I would argue, a vulgar deformation of the thought of Marx and Engels. For what they are saying is that 'the modern state is but a committee for managing the common affairs of the whole bourgeoisie': the notion of the whole bourgeoisie implies the existence of separate elements which make up that whole. This being the case, there is an obvious need for an institution of the kind they refer to, namely the state; and the state cannot meet this need without enjoying a certain degree of autonomy. In other words, the notion of autonomy is embedded in the definition itself, is an intrinsic part of it" (Miliband, 1973:fn.).

> For what his exclusive stress on objective relations suggests is that what the state does is in every particular and at all times wholly determined by these 'objective relations'; in other words, that the structural constraints of the system are so absolutely compelling as to turn those who run the state into the merest of functionaries and executants of policies imposed on them by 'the system' (Miliband, 1972:258-59).

This particular criticism has been voiced by others in the literature. Esping-Anderson and his associates (1976), for example, see a major analytical problem in the failure of the structuralist position to explain class action that arises from class consciousness. In other words, members of a class, according to the structuralist position, are seen to respond to the systemic logic and not their own, self-initiated political practice. As such, for Poulantzas, individuals are merely "agents" of the social structure and not conscious, intention-oriented actors. As he writes, "political class struggle has nothing to do with a . . . process . . . 'acted' . . . by the class subject" (Poulantzas, 1973:77). Given this position, therefore, it becomes impossible for Poulantzas to specify the conditions under which the subjective interests of the capitalist class members will coincide with the functions of the state.

Another difficulty with Poulantzas' structuralist view of the state emerges from his insistence on the 'specificity of the political' and the relative autonomy between the economic and the political under capitalism. For what this analytical separation leads to is a neglect of the interrelation between these spheres. More specifically, Poulantzas fails to consider the relationship between political forms and the 'anatomy of civil society'; the relationship between the state and the contradictions of capitalist accumulation. As Holloway and Picciotto state:

> This insistence on the 'relative autonomy' of the political may reflect a partly justifiable reaction against 'economism' or 'reductionism', i.e., against the common over-simplification of the relation between the economic and the political which presents the political as a mere reflection of the economic. But the 'reductionist' approaches have the merit of trying to provide an answer, however crude, to a real problem, the problem of how we come to a materialist understanding of political development, of how we relate political development to the contradictions of capitalist production; it is no improvement to simply sidestep the problem (Holloway and Picciotto, 1978:6).

The principal consequence, therefore, of this separation between the economic and political 'instances' is that we are given no analysis of capitalist exploitation of the working class in the process of accumulation or, more importantly, of the constraints and limitations which the nature of the capital accumulation process places on state action.

C. Summation

From this discussion of the specific features of the instrumentalist and structuralist views on the state-society relationship, it would seem that there is little in the way of a 'common ground' within

Marxism on which to base a theory of the state. The two positions appear to stand at opposite ends of a continuum. While Miliband is seen to rely heavily on observable capitalist class input into the state system, Poulantzas has gone in the other direction of virtually excluding class-originated inputs into the formation of state policy.

Yet, in many respects, the distinction which has been forged between the instrumentalists and the structuralists is a false polarity. For example, rather than posing opposite views of the state, Holloway and Picciotto (1978:3) have argued: "that which Poulantzas and Miliband have in common is at least as significant as that which separates them."

To elaborate, both Miliband and Poulantzas focus on the political as an autonomous object of study. While neither denies Marx's dictum that 'political forms' can be understood only when related to the 'anatomy of civil society', they both fail to consider this relation with any precision. As a consequence, neither Miliband nor Poulantzas tries to build systematically on the historical materialist categories developed by Marx in Capital in order to construct a Marxist theory of the state (c.f., Holloway and Picciotto, 1978). On these grounds, it can be argued that both Miliband and Poulantzas share a similar failing, in that

> . . . any theory of the bourgeois state that implicitly presupposes an unproblematic congruity between the boundaries of the economic sphere and those of the political sphere cannot uncover the full extent to which the capitalist mode of production shapes the forms and functions of the nation state (Fay, 1978:142).

Rather than viewing Marx's analysis in Capital as one which is specific only to the economic level, it is suggested here that what that analysis really offers is a materialist critique of political economy. Viewed in this light, Marx's analysis provides us with the basis for a materialist theory of the state, that is, a theory based upon - not the more 'political' writings undertaken by Marx - but the materialist categories which were developed in Capital. Such a theory would be one which views the economic and the political - not as autonomous - but both as forms of social relations, that is, "forms assumed by the basic relation of class conflict in capitalist society, the capital relation; forms whose separate existence springs, both logically and historically, from the nature of that relation" (Holloway and Picciotto, 1978:14).

To present a critical evaluation of the perspectives on the state offered by such theorists as Miliband and Poulantzas is not to suggest that they have contributed nothing to the development of a Marxist theory of the state. Quite the contrary, it should be obvious from the preceding discussion that a number of factors have emerged from their work which hold implications for the direction in which such theorizing should be headed. Indeed, these factors become of crucial importance in the chapters to follow. By way of summarizing the above discussion, therefore, and highlighting those elements which are deserving of further attention, the following points may be made:

1. It has become apparent that one of the common elements in Marxist theories of the state is the subordination of the state to the particular mode of production and dominant class(es) in that mode. In other words, the state in capitalist society is necessarily a capitalist state.
2. The relationship between the state and the dominant class in capitalist society does not necessarily constitute a direct corres-

pondence between those who hold positions of state power and the members of the capitalist class. This is not to say that a 'positional analysis' of those who hold state power is of no value in understanding the state-society relationship. However, such an analysis - in and of itself - should not be taken as conclusive evidence of the linkages between the state and the class structure.

3. Because the state in capitalist society is a capitalist state, it is subject to the contradictions and constraints of the capitalist system. In fashioning a 'theory of the state', therefore, it becomes necessary to consider the state in terms of the structural limitations which are imposed upon it.
4. Following Poulantzas, it seems plausible to view the state as characterized by a degree of relative autonomy from the capitalist class. For, an analysis based on 'relative autonomy' avoids the pitfalls of both the liberal view of the 'neutral state' and the economistic and instrumentalist views of the state as simply a 'tool' of the ruling class.
5. Given the many competing interests that exist between the various units of capital, it makes sense to view the capitalist class - not as a monolith - but as consisting of a number of class fractions whose short term interests do not always converge with one another. This particular character of the capitalist class raises important questions with respect to the role of the state in reproducing class domination.
6. Following Miliband, it becomes important to specify the complex of institutions that make up the 'state system'. This is especially significant when considering not simply the linkages between these institutions and the class structure, but the role which they them-

selves play at various historical points in time in maintaining and perpetuating capitalist societies.

7. Finally, the political can best be understood - not as an autonomous 'instance' - but as a specific form of the capital relation. Following this, a Marxist theory of the state can be advanced with the use of those materialist categories developed by Marx which explain that capital relation.

These, then, are some of the more significant points to emerge from our discussion of theories of the state. They offer significant guidelines as to the requirements of a more coherent 'theory of the state'. Above all, it has become clear that the starting point for such a theory must be the examination of 'the anatomy of bourgeois society', that is, an analysis of the capitalist mode of production, the appropriation of surplus labour and the resulting laws of social reproduction which ultimately give rise to the particular political or state form under capitalism.

In the next chapter, this 'anatomy of bourgeois society' will be considered in more detail. Specifically, the discussion will entail an elaboration of the basic propositions of Marxist political economy and the materialist categories expounded by Marx which can then be used as a basis for a subsequent analysis of the capitalist state.

Chapter Four

Marxist Political Economy

Marxists generally take the position that "(t)here is no such thing as 'economics' - only 'political economy', in which the 'political' element is an ever-present component" (Miliband, 1977:6). At its core, Marxist political economy is concerned with the relationship between the economy - or the way production is organized - and the political and social institutions and processes in society. As such, the concepts of political economy are those categories which determine the internal structure of society and on which the principle classes are based.

Traditionally, 'political economy' referred to the school of classical British economists - most notably Adam Smith and David Ricardo. These theorists were concerned with an analysis of the economic system of the day - capitalism - and formulated a 'labour theory of value' to explain the economic and social relations within that society. Marx took over the concepts of political economy utilized by the classical theorists, incorporating them into his own social theory, which is usually referred to as 'historical materialism'. In his Contribution to Critique of Political Economy, Marx explains how he arrived at his materialist conception of history:

> I was led by my studies to the conclusion that legal relations as well as forms of state could be neither understood by themselves nor explained by the so-called general progress of the human mind, but that they are rooted in the material conditions of life, which are summed up by Hegel after the fashion of the English and

> French of the eighteenth century under the name "civil society"; the anatomy of that civil society is to be sought in political economy (Marx and Engels, 1959:43).

Marx's social theory may be said to be 'materialist' in that "it explains the social world in terms of the interaction of human beings and inanimate nature in the process of producing goods to meet their material needs" (Gough, 1979:5). It is 'historical' because "unlike classical political economy, capitalist society is understood and analysed as one stage in a process of historical development" (Gough, 1979: 6).[1] Classical political economy treated commodity production as the end point of a prior process of development of human societies. With Marx, however, commodity production, as representative of capitalism, represents but one phase in an on-going process. Thus, Marx's work represents both a link and a break with the propositions of the classical theorists. His analysis provides us with "a theory of history, of social formation, and of social revolution" (Gough, 1979:6).

It is to a discussion of the basic tenets of Marx's social theory which we will now turn. Briefly stated, the central issue to be addressed here concerns the nature of the economic variable in Marxist thought, that is, our purpose will be to explain the primacy of the economic level as a determinant of class relations in capitalist society according to Marxist principles.

For Marx, productive activity is at the root of all human societies such that the development of society is the result of a continual productive relationship between man and nature. Men begin to distinguish themselves from nature as soon as they begin to produce their own means of subsistence. Human productive activity, human labour, transcends the mere instinctual activity of other animals: it is purposive action guided by intelligence. The human capacity to perform work represents the sole source of humanity in confronting nature. It is the force which created humankind and by which humankind created the social world. As Braverman describes it:

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[1] As Engels states: "According to the materialist conception, the determining factor in history is, in the final instance, the production and reproduction of immediate life" (Engels: 1972:71). Moreover, Poulantzas, following Althusser, offers the following definition of 'historical materialism': it "has as its object the concept of history, through the study of the various modes of production and social formations, their structure, constitution and functioning, and the forms of transition from one social formation to another" (Poulantzas, 1973:11).

> Freed from the rigid paths dictated in animals by instinct, human labour becomes indeterminate, and its various determinate forms henceforth are the products not of biology but of the complex interaction between tools and social relations, technology, and society (Braverman, 1974:51-52).

In other words, every kind of human productive system entails a definite set of social relationships between individuals in the productive process.

This is where Marx begins to diverge from the classical political economists. For Marx criticized Smith for viewing men as "isolated individuals" and thus concealing the social character of production (see: Marx, 1973). Smith saw labour as the source of man's self-creation, but he obscured the fact that the self-creation of man through production entails a process of social development. Stated differently, human beings do not produce as "isolated individuals," but as members of a definite form of society. When Marx speaks of production, therefore, he means "production at a definite stage of social development - production by social individuals" (Marx, 1973:85).

At any given time, individuals in a society possess a certain level of productive ability. This depends upon their knowledge and skills, on the technology available to them (for example, machines, tools, etc.) and on the resources available in the natural environment in which they live. These elements together are what Marx refers to as the "material forces of production" or "productive forces." Moreover, the stage of development of the productive forces, the "mode of production," determines the way in which individuals make their living (for example, hunting and gathering, agriculture, industry) - it determines the "means of production" which will be available to them. It also determines the way in which individuals relate to one another in producing and exchanging the means of life (for example, master and slave, lord and serf, capitalist and worker). These production and exchange relations are what Marx termed the "social relations of production." They include: property relations, the way in which labour is organized, recruited and compensated, and the markets and other means of exchanging the products of labour (c.f. Gurley, 1979). In one of Marx's more oft-quoted passages, he summarizes this position, which served as the 'guiding thread' in his studies:

> In the social production of their life, men enter into definite relations that are indispensable and independent of their will, relations of production which correspond to a definite stage of development of their material productive forces. The sum total of these relations of production constitutes the economic structure of society, the real foundation on which rises a legal and political superstructure and to which correspond definite forms of social consciousness. The mode of production of material life conditions the social, political and intellectual life-process in general (Marx, in Tucker, 1972:4).

Thus far, no mention has been made of the concept 'class'. Actually, Marx tended to use the concept of class in a cavalier fashion, taking its meaning for granted. Where he does finally reach the point of clarifying the concept - in Volume III of Capital - the analysis breaks off after only two pages.

Marx does, however, specify that class is not to be identified with source of income in the division of labour, as this would yield an almost endless plurality of classes. Moreover, classes are not 'income groupings'. Part of Marx's general premise in Capital is that the distribution of economic goods is not a sphere separate and independent of production - but is determined by the mode of production. This is why it is possible, according to Marx, for two individuals to have the same income and even the same occupation - but belong to different classes. For example, this would be the case with two carpenters - one who owns his own business and the other who is employed by a large company.[2]

In short, classes, for Marx, are defined in terms of the relationship of groupings of individuals to the ownership of private property in the means of production. This conception of class yields a dichotomous model of class relations. In each type of society, there are two fundamental classes: a dominant class which owns the material prerequisites for production and a subordinate class which does not. Obviously, since all concrete societies usually include within them more than one mode of production, the class structure of the society will be more complex than the simple two-class model. However, Marx acknowledged, for example, the existence of "transitional classes": those groupings which derive from a set of relations which are either being superceded or are ascendant (c.f. Giddens, 1973). Nevertheless, because one mode of production is usually dominant, in any society two classes will be most significant.

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[2] This is an important distinction, especially in light of the prominence of the neo-Weberian tradition which bases 'class' in the relations of distribution. According to this conception, the distribution of income, education and prestige are the primary indicators of class. This popular conception is closely related to income distribution, with arbitrary cutting points usually being established to denote upper, middle and lower classes. Thus, the existence of 'class' is based on the fact that certain groupings in society have greater or lesser amounts of various resources. For a discussion of the differences between the neo-Weberian and Marxian conception of 'class' see: S. Marshall (1979).

What must also be stressed here is that 'class', in the Marxian use of the concept, is a relational term (c.f. Wright, 1980). Classes are never defined as being 'above' or 'below' another class, but in their social relation to another class. Furthermore, this relation is a fundamentally antagonistic one: conflict is an inherent feature of any class system. To illustrate this point, under capitalism the dominant class - or capitalists - constitute a 'class' only to the degree that they carry on a struggle with another class - the workers. Otherwise, capitalists are merely in economic competition with one another for the pursuit of profit in the market.

Further to this, Marx also emphasized that in order for classes to exist, the relations of production must involve a differentiated division of labour which allows for the appropriation of a surplus product by the dominant class. Classes, as such, are integrally connected to the division of labour in society, since a relatively well-developed division of labour is necessary for the creation of a surplus product without which classes cannot exist.

The division of labour can be broken down into two broad categories: the non-producers and the direct producers. And the relationship between these two categories is one of exploitation. Exploitation here refers to "the process whereby the former, the dominant class, extracts surplus labour from the latter, the subordinate class" (Gough, 1979:18).

To elaborate, there are two categories of labour of the direct producers. The first is what Marx termed "necessary labour." That is, the labour of the subordinate class produces a social product, but only part of it (necessary labour) is retained by the subordinate class. The second is what Marx termed "surplus labour." For the remainder (surplus labour) is appropriated by the dominant class and used for whatever purpose, for example, their own consumption, expanding the means of production, building armies and so on.

What distinguishes between different types of societies is the types of relationships between the direct producers and the non-producers and the social mechanisms by which surplus labour is extracted from the direct producers (c.f. Wright, 1978). Generally speaking, however, there are two necessary conditions required for the exploitation of one class by another: 1) the productivity of labour must exceed the minimum level necessary to maintain life and health and the reproduction of the population; and 2) one class must own and control at least part of the means of production and thereby be in a position to claim the product of surplus labour (Gough, 1979:18). These two conditions make it apparent that the mode of production refers not only to the organization of the labour process but also to the way in which classes relate to one another in this process. In this way, the mode of production of a society - its economic infrastructure - ultimately determines the entire social structure. Stated in Marx's own words:

> The specific economic form, in which unpaid surplus labour is pumped out of direct producers, determines the relationship of rulers and ruled, as it grows directly out of production itself and in turn, reacts upon it as a determining element. Upon this, however, is founded the entire formation of the economic community which grows up out of the production relations themselves, thereby simultaneously its specific political form. It is always the direct relationship of the owners

> of the conditions of production to the direct producers - a relation always naturally corresponding to a definite stage in the development of the methods of labour and thereby its social productivity - which reveals the innermost secret, the hidden basis of the entire social structure, and with it the political form of the relation of sovereignty and dependence, in short, the corresponding specific form of the state (Marx, 1977, Vol. 111:791).

To this point, we have covered some of the basic concepts utilized by Marx (mode of production, forces of production, social relations of production) and have briefly elaborated on what classes constitute in the Marxist sense and how they relate to one another in the production process. It was stated that the hallmark of all class societies is the appropriation of surplus labour (exploitation) by a dominant class. What remains to be seen, however, is how the exploitation of one class by another takes place under capitalism. As Sweezy has noted:

> What is specific to capitalism is not the fact of exploitation of one part of the population by another, but the form which this exploitation assumes, namely the production of surplus value (Sweezy, 1942: 62).

Indeed, Marx's analysis of class domination is primarily directed toward explicating the structure and dynamics of capitalist or bourgeois society. While "(t)he history of all hitherto existing society is the history of class struggles," the bourgeois epoch, for Marx, had the distinctive feature of simplifying the class antagonisms: "Society as a whole is more and more splitting up into two great hostile camps: the Bourgeoisie and Proletariat" (Marx and Engels, 1967:79 and 80).

Generally speaking, under capitalism, naked market relationships appear as the determinant of human productive activity; exploitation is more 'brutal'. As a contrast, under feudalism, economic domination and subordination was fused with personal ties between individuals - the domination of the feudal land owner operated through personal connections of bondage or the direct payment of tithes. Consequently, the serfs maintained a large degree of control over the means of production even though a portion of it had to be given over to the lord. With the advent of the capitalist mode of production, these social relations were altered significantly.

Under capitalism social products - goods and services - take the form of commodities which are exchanged in the market for money.

> Definite historical conditions are necessary that a product may become a commodity. It must not be produced as the immediate means of subsistence of the producer himself . . . The appearnace of products as commodities presupposes such a development of the social division of labour, that the separation of use-value from exchange-value, a separation which first begins with barter, must have already been completed (Marx, 1977, Vol. 1:166-67).

In other words, a 'commodity' is that which is produced for exchange on the market (exchange-value) rather than for its direct use by the producer (use-value).

Under simple commodity production, each producer owns and works with his own means of production. He sells his product on the market in order to purchase other products which satisfy his specific wants. The individual thus starts with commodities - exchanges them in the market for money - and uses the money to buy other commodities. Marx symbolized this transation as C-M-C.

However, for capitalist commodity production to occur, three basic conditions are necessary: 1) workers are separated from the means with which production is carried on and can gain access to them only by selling their labour power to others; 2) workers are freed of legal constraints, such as serfdom or slavery, that prevent them from disposing of their own labour power; and 3) the purpose of the employment of the worker becomes the expansion of a unit of capital belonging to the employer, who is thus functioning as a capitalist (Braverman, 1974:52). As such, under capitalism, one class - the capitalists - own the land, machinery, buildings and so on necessary for production while another class - the workers - possess only their labour power which they sell to the capitalist. Capitalist commodity production thus entails that:

> for the conversion of his money into capital, therefore, the owner of money must meet in the market with the free labourer, free in the double sense, that he as a free man can dispose of his labour-power as his own commodity, and that on the other hand he has no other commodity for sale, is short of everything necessary for the realization of his labour power (Marx, 1977, Vol. 1:166).

Both the means of production and labour power are commodities - both are objects of exchange and thus possess exchange-value. This means that with capitalism, both the relations among owners and the relations between owners and non-owners (capitalist and worker) are exchange relations. The former is compatible with simple commodity production while the latter is distinct from simple commodity production.

Under capitalist commodity production, then, the capitalist goes to the market with money, purchases commodities (labour power and the means of production) and after the process of production is completed returns again to the market with products which he converts into money. Marx symbolized this in the form of M-C-M. Yet, the motive of the capitalist is to expand his unit of capital, that is, to make a profit. As Marx states, "profit is the motive power of capitalist production. Things are produced only so long as they can be produced with a profit" (Marx, 1977, Vol. 111:259). The object of production, then, is to create a surplus value from the capitalist's initial investment. The process, as such, would be more correctly symbolized in the form of $M\text{-}C\text{-}M^1$, where M^1 is greater than M (c.f. Sweezy, 1942).

In capitalist production, the labour market appears as a sphere of free exchange between the worker and capitalist. The worker is 'free' to sell his labour power to whomever he pleases. He is not 'forced' to labour for the capitalist in the way a serf is for a lord. The capitalist does not 'own' the worker as a master does a slave. From where, then, does the profit of the capitalist - the surplus value - derive?

Marx addressed this question by adopting and reformulating the 'labour theory of value' put forth by Smith and Ricardo. The basic premise of the labour theory of value is as follows:

> . . . if one is interested in understanding the relationship of class forces to social production, then a measure of value based on hours of human labour embodied in commodities is most useful (Wright, 1978:115).

Accordingly, under simple commodity production, the average price of a good will be proportional to the time taken to produce it. That is, the value of a social product or commodity is determined by the 'socially necessary labour time'. Under capitalist production, two different levels of relationships appear: 1) the exchange relationship between labour power and capital and 2) the production relationship between labour and capital (c.f. Wright, 1978).

At the level of exchange relationships, the worker sells his labour power to the capitalist in exchange for a wage. The value of the commodity 'labour power' is determined by the 'socially necessary labour time' that goes into the production and reproduction of the worker. This includes: 1) the means of subsistence necessary for the labourer to maintain his health and strength; 2) the means necessary to ensure for the labourer's substitutes, that is, the rearing of his children; and 3) the expense of educating or training the labourer (see: Marx, 1977, Vol. 1:167-69).[3] The worker thus receives a wage from the capitalist that is more or less equal to the value of his commodity.

At the level of exchange, therefore, it appears as if an "exchange of equivalents" has occurred. The sphere of exchange is described by Marx as one characterized by 'Freedom, Equality, Property and Bentham':

> Freedom, because both buyer and seller of a commodity, say of labour-power, are constrained only by their own free will. They contract as free agents, and the agreement they come to is but the form in which they give legal expression to their common will. Equality, because each enters into relation with the other, as with a simple owner of commodities, and they exchange equivalent for equivalent. Property because each disposes only of what is his own. And Bentham, because each looks only to himself. The only force that brings them together and puts them in relation with each other, is the selfishness, the gain and the private interests of each (Marx, 1977, Vol. 1:172).

It is at the level of production where the 'labour power' of the worker is transformed into 'actual labour'. It is here where Marx emphasized that the worker does not sell his labour, as such, but his capacity to labour. 'Labour power' is an unique commodity in that it is capable of producing a value greater than its own. All other inputs into the production process, such as machinery and raw materials, can only transfer their value to the final output. Human labour, in contrast, can produce an 'extra value' over and above that which is necessary to produce itself. This means that for part of the day, the worker is working for his wages - providing the means of livelihood for himself and his family (necessary labour). But for the other part of the day his work is 'surplus', and creates a surplus value or profit for the capitalist.[4] This, then, is from where the surplus value derives. The capitalist is able to appropriate a surplus value and thus make a profit because he has purchased the labour power of the worker.

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[3] Since the level of consumption of the worker is not 'fixed' i.e., it is influenced by the level of development of the capitalist mode of production and the degree of class struggle, the value of labour power will vary at different historical points in time.

It is at the level of production relationships, then, where the exploitation of the worker and hence the class character of the production process is revealed. Consequently, despite the 'freedom' of the workers to sell their labour power[5] and the 'freedom' of exchange on the market, a structured inequality prevails since the worker is 'coerced' in the sphere of production to produce more value than the cost of his own production. In capitalist society, therefore, the central mechanism for exploitation and domination lies in the specific pattern of exchange and production relations (c.f., Gough, 1979; Wright, 1978).[6]

Any productive process necessarily entails, at one and the same time, the 'reproduction' of that process. Marx stated that:

> The conditions of production are also those of reproduction. No society can go on producing, in other words, no society can reproduce, unless

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[4] Marx calls the ratio between necessary and surplus labour the 'rate of surplus value' or 'rate of exploitation'.

[5] This is really an 'illusory' freedom, as the worker must sell his labour power in order to survive.

[6] It is this aspect of Marx's thought which distinguishes his theorizing most clearly from the classical political economists. The central defining feature of capitalism for writers such as Smith was exchange - relations between social classes appeared in the form of

> it constantly reconverts a part of its products into means of production, or elements of fresh products (Marx, 1977, Vol. 1:531).

Under capitalism, the surplus value which the capitalist appropriates provides the means for the reproduction of the capitalist system, that is, it provides the means for the renewed accumulation of capital. Capital accumulation can be defined as: "the reproduction of capitalist social relations on an ever-expanding scale through the conversion of surplus value into new constant and variable capital" (Wright, 1978:113).[7] This definition requires some clarification.

To begin with, the value of any social product or commodity can be broken down into three component parts:

1) constant capital - the value of the machinery and materials used in the production process. Constant capital does not undergo any quantitative change in value in the production process.
2) variable capital - the value of the labour power used up in the production process. It is called 'variable capital' because it produces a new variable amount of value - surplus value - in the pro-

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rent, profit and wages only at the level of the distribution of the total social product. For Smith capitalism is the trading and commercial society. It is for this reason that Marx criticizes the classical political economists - they failed to penetrate the sphere of circulation of goods in order to decipher the social relations of production that underpin commodity exchange see: D. McNally, 1981. McNally discusses the implications of this aspect of Smith's work vis-a-vis Innis and theorizing on Canadian political economy.

[7] What should be mentioned here is Marx's emphasis on the fact that 'capitalist reproduction' refers not simply to the continuous process of producing commodities and surplus value, "it also produces and reproduces the capitalist relation; on the one side the capitalist, on the other the wage-labourer" (Marx, 1977, Vol. 1:542).

duction process,

3) surplus value - the value of the surplus product produced by the workers.

The relationship between these three elements can be written in the following formula:

$$C + V + S = \text{Total value of the product.}$$

In analysing the structure of capitalism, Marx constructed a model of reproduction on a static scale - a model which represented a hypothetical, unchanging capitalist system. This he referred to as "simple reproduction." In essence, Marx's scheme of simple reproduction is "a device for displaying the structure and demands in the capitalist economy in terms of the kinds of commodities produced and the functions of the recipients of incomes" (Sweezy, 1942:79). More specifically, the scheme of simple reproduction provides us with a framework for understanding the process of capital accumulation.

The model of 'simple reproduction' consists, first of all, of a distinction between two sectors of the economy: one which produces the means of production and another which produces consumption goods. These two sectors can be expressed as follows:

$$C_1 + V_1 + S_1 = P_1 \quad \text{(Production)}$$
$$C_2 + V_2 + S_2 = P_2 \quad \text{(Consumption)}$$

Accordingly, the capitalist system under simple reproduction would be one which

> preserves indefinitely the same size and same proportion among its various parts. For these conditions to be satisfied capitalists must every year replace all capital worn out or used up and spend all of their surplus value on consumption; and workers must spend all of their wages on consumption (Sweezy 1942:76).

This means that the value of the constant capital used up in the consumption branch (C_2) must be equal to the value of commodities consumed by workers (V_1) and capitalist (V_2) engaged in producing the means of production. If this is the case, then the scale of production would remain unchanged from one year to the next, that is, an 'equilibrium condition' would exist.

However, in the scheme of 'simple reproduction', no consideration is given to what is of central concern to the capitalist - that of expanding his capital. This is accomplished by converting a (major) portion of his surplus value into additional capital. This augmented capital enables him to appropriate more surplus value, which is then used to produce additional capital, and so on. Marx conceptualized this process as "expanded reproduction." It constitutes the situation in which at least part of the surplus value is used to augment the level of constant and variable capital. In other words, under 'expanded reproduction', part of S_1 is used to increase C_1 and part of S_2 is used to increase V_1 and V_2.[8]

It is this process which constitutes the accumulation of capital. Capital accumulation is the 'driving force' of capitalist development. Its significance for the survival of capitalism is manifested in at least two ways. For one, at the level of 'capital in general' that is, of the capitalist system understood as the confrontation of capital and labour,

> . . . accumulation plays a vital role in containing and channelling the class struggle. Accumulation underpins much of the ideological legitimation of the inequalities of capitalist society. The ever-expanding pie enables the standard of living of the

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[8] The 'rate of profit' of the capitalist is determined by the ratio of constant capital to variable capital in the economy.

> working class to increase slowly without threatening relations of production. At the same time it helps to legitimate the vastly higher standard of living of the capitalist class. A prolonged period of non-accumulation (let alone disaccumulation) would seriously undermine such legitimations and would lead to a considerable intensification of class conflict (Wright, 1978:122-23).

For another, at the level of 'many capitals', accumulation allows the competition between capitalists for profit to proceed (more or less) smoothly. If a situation of 'non-accumulation' were to prevail, the competition would intensify and could prove detrimental to the capitalist class as a whole. As Marx states:

> So long as things go well, competition effects an operating fraternity of the capitalist class . . .. so that each shares in the common loot in proportion to the size of his respective investment. But as soon as it no longer is a question of sharing profits, but of sharing losses, everyone tries to reduce his own share to a minimum and to shove it off upon another. The class, as such, must inevitably lose (Marx, 1977, Vol. III:253).

For these reasons, then, accumulation is a requisite for capitalism.

With the accumulation of capital comes the development of the productiveness of labour. For the growth of capital on an 'ever-expanding scale' requires an increase in variable capital. But with this increase in _demand_ for labour power, it follows that there will be a corresponding increase in the _value_ of labour power, that is, the wages of the workers will also increase. The question which this raises is: what prevents the working class, through an increase in wages, from 'swallowing up' the surplus value?

To a certain degree, the demand for laour power is kept in check by the development of technology and the increasing mechanization of production. Nevertheless, Marx argued that capitalist production cannot rely upon the natural growth of the population to meet the demand for labour. Rather, it requires a 'relative surplus-population' to exert a downward pressure on wages and thus prevent labour from absorbing the surplus value. So, for example, when productivity increases in a particular sphere of production and the demand for labour rises, wages will rise - attracting a larger part of the surplus working population until the demand is fulfilled and, whereupon, wages will fall. In this way, a relative surplus-population, or what Marx termed the "industrial reserve army," serves to keep in check the law of the supply and demand of labour.[9] As Marx states:

> The industrial reserve army, during periods of stagnation and average prosperity weights down the active labour-army; during the periods of overproduction and paroxysm, it holds its pretensions in check. Relative surplus-population is therefore the pivot upon which the law of demand and supply of labour works. It confines the field of action of this law within the limits absolutely convenient to the activity of exploitation and to the domination of capital (Marx, 1977, Vol. 1:598).

Generally speaking, then, the industrial reserve army functions to place pressure on those who are working (through competition for jobs) and thereby forces the worker "to submit to over-work and subjugation under the dictates of capital." In essence, the existence of a relative surplus-population becomes a condition for the continued existence of the capitalist mode of production.

> It forms a disposable industrial reserve army that belongs to capital quite as absolutely as if the latter had bred it at its own cost. Independently of the limits of the actual increase of population, it creates, for the changing needs of the self-expansion of capital, a mass of human material always ready for exploitation (Marx, 1977, Vol. 1:592).

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[9] This 'industrial reserve army' consists, for example, of those labourers who have become redundant through mechanization, the unemployed, immigrants and housewives.

Thus, while the capitalist class accumulates more and more wealth, the relative surplus-population ensures that the working class can never rise much above a subsistence level.

Capital accumulation, as the 'driving force' of capitalist development, carries with it a number of dynamic tendencies. The first is that of a continual revolutionizing of the means of production, which is aided by the continuing development of science and technology. Correspondingly, labour becomes 'co-operative labour', since the instruments of labour (machines, tools and so on) are transformed into "instruments of labour only usable in common" (Marx 1977, Vol. 1:714). As Marx stated in the Manifesto:

> The bourgeoisie cannot exist without constantly revolutionizing the instruments of production, and thereby the relations of production, and with them the whole relations of society (Marx and Engels, 1967:83).

In other words, there is a tendency, as accumulation proceeds, for a change in the 'forces of production' to occur - both in technology and the means of production and in the organization of the labour process.

A second tendency is that of the concentration and centralization of capital. "Concentration" refers to the process whereby, as capital accumulates, individual capitalists succeed in expanding the amount of capital under their control. This is in large part accommodated by the creation of a world market. "Centralization," on the other hand, refers to the merging of existing capitals. It is "concentration of capitals already formed, destruction of their individual independence, expropriation of capitalist by capitalist, transformation of many small into few large capitals" (Marx, 1977, Vol. 1:586).[10] This centralization of capitals is promoted by the competition between capitalists - their constant striving to undercut the prices of their rivals - and by the credit system, especially banking. As such, "centralization completes the work of accumulation by enabling industrial capitalists to extend the scale of their operations" (Marx, 1977, Vol. 1:588).

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[10] Marx cited the creation of joint-stock companies to illustrate this point.

Finally, a third tendency of the progression of accumulation is the dissolution of all previous modes of production. Marx stated that, as capitalist production develops,

> . . . it has a disintegrating, resolvent effect on all other forms of production . . . Wherever it takes root capitalist production destroys all forms of commodity production which are based either on the self-employment of the producers, or merely on the sale of the excess product as commodities (Marx, 1977, Vol. II:36).

Thus, for example, peasant agriculture is undercut by capital-intensive agriculture and the self-employed (for example, craftsmen) are displaced by factory-produced goods and large-scale enterprise. This tendency results in an increasing 'proletarianization' of the labour force - more and more workers come under the employment of large capital.

Marx viewed capitalism and its potential productive capacity as a vast improvement over previously existing modes of production. For in the course of the historical development of the capitalist mode of production, it "revolutionizes, through the organization of the labour-process and the enormous improvement of technique, the entire economic structure of society in a manner eclipsing all former epochs" (Marx, 1977, Vol. II:37). Yet while capitalism stood to be an incredibly productive system, it was also an inherently unstable one; fraught with contradictions which manifested themselves in the form of economic crises.[11]

Marx never provided a complete or systematic discussion on the nature of crises under capitalism. There are some logical reasons why this is so. For one, given the level of abstraction to which Capital was confined, Marx could not adequately analyse crises. For another, Marx saw crises to be extraordinarily complicated phenomena. They were an end-result of a variety of possible factors and could therefore not be explained in terms of a simple causal process. In effect, 'crises' like 'class' - remained on the list of Marx's unfinished business.[12] Nevertheless, Marx does provide us with a discussion of the basic factors which underlie the propensity for crises under capitalism.

Marx demonstrated that capitalist production had certain internal barriers to its own indefinite expansion. To begin with, these internal barriers or limitations become apparent:

> In that the development of the productivity of labour creates out of the falling rate of profit a law which at a certain point comes into antagonistic conflict with this development and must be overcome constantly through crises (Marx, 1977, Vol. III:258).

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[11] Some clarification of the Marxist use of the term 'crises' is in order here. As Giddens defines it, a 'crisis' is "an expansion of production beyond what the market can absorb and still return an adequate rate of profit" (Giddens, 1971:55). Giddens notes that 'crises' are not to be confused with a breakdown of the system. On the contrary, they "form the regulating mechanism which enables the system to survive periodic fluctuations to which the capitalist system is subject" (p. 55). Moreover, crises are not to be confused with business cycles: "A cycle implies that there has been some sort of disturbance in accumulation which can be alleviated without any basic structural changes" (Wright, 1978:125).

[12] One of the ramifications of this has been a considerable amount of controversy and debate among Marxist political economists over the nature of the contradictions in the accumulation process which push the capitalist system toward economic crises. For a review of the major positions taken see: Wright, 1976.

Marx viewed the search for profit as an intrinsic feature of the capitalist production process. At the same time as the capitalist is motivated by profit-seeking, however, there is in the capitalist production process a structural tendency for the rate of profit to decline. Marx contributed to an understanding of this phenomena with his 'law of the tendency of the falling rate of profit'.

The 'law of the tendency of the falling rate of profit' is essentially an analysis of the organic composition of capital and its relation to the rate of surplus value.[13] The law states that the rate of profit tends to fall in the course of capitalist development because, as a general rule, the organic composition of capital rises relatively more rapidly than the rate of surplus value (or rate of exploitation).

With the progressive development of the social productivity of labour, the same number of labourers in the same time and with less energy can convert an ever-increasing amount of materials into commodities. This results in a cheapening of commodities, since the 'socially necessary labour time' needed to produce them is lessened. Moreover, this produces a "progressive relative decrease of the variable capital as compared to the constant capital" (that is, a decline in the rate of profit) and, "consequently a continuously rising organic composition of the total capital" (Marx, 1977, Vol. III, 212-213).

The rate of profit will continue to decrease unless (1) the rate

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[13] The 'organic composition of capital' can be defined as: a ratio that is designed to reflect the salient aspects of technology that impinge on the rate of profit. The most useful simple expression for this is the ratio of dead labour (constant capital) to living labour in production:

$$Q = \frac{C}{V + S}$$

(Wright, 1978:126-127).

of surplus value increases sufficiently to counter-balance the rising organic composition of capital, or (2) unless the organic composition of capital is kept from rising. Marx outlined a number of 'counteracting causes' which could 'thwart' and 'annul' the general law of the falling rate of profit.[14] In the long run, however, such 'counteracting causes' could not completely prevent the rise in the organic composition of capital and thus a decline in the rate of profit.

When the falling rate of profit becomes sufficiently serious, and can no longer be compensated by the rate of surplus value, an economic crisis occurs. This 'economic crisis' takes on the appearance of a 'crisis of overproduction'.[15]

> Because not enough (surplus value) has been produced capital cannot expand at a rate which would allow for the full realization of what has been produced. The relative scarcity of surplus-labour in the production process appears as an absolute abundance of commodities in circulation (Mattick in Wright, 1978:129).

As such, a sufficient level of return on investment at the 'average rate of profit' is not made. Investment thus declines as capitalists withhold investment because there are no profitable outlets. As a result, the least profitable capitalists disappear. At the same time, the labour force is laid off, which leads to a further decline in the rate of profit as consumer purchasing power is reduced.

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[14] Marx suggested five possible 'counteracting causes': (1) the cheapening of the elements of constant capital; (2) raising the intensity of exploitation (e.g., lengthening the working day); (3) depression of wages below their value; (4) relative over-population (i.e., the industrial reserve army); and (5) foreign trade. While the first and fifth would effect the organic composition of capital, the second through fifth would effect the rate of exploitation. (Foreign trade effects both in that it cheapens constant capital and the necessities for life) see: Marx 1977, Vol. III:chapter XIV.

[15] It should be mentioned here that capitalism is the first system in which overproduction is actually possible - but it is 'overproduction' in terms of the requisites of the capitalist economy.

The conditions of crisis actually serve as a means for restoring the conditions for the resumption of profitable accumulation. That is, as capitalists go bankrupt, they are forced to sell their existing constant capital at prices below real exchange values. Moreover, as unemployment increases, the reserve army of labour swells forcing wages down and hence increasing the rate of exploitation. This leads to the resumption of investment and, once again, an increasing rate of profit. Once the rate of profit is restored, accumulation proceeds and the crisis ends.

Marx emphasized that each crisis becomes progressively more severe: "Capitalist production seeks continually to overcome these immanent barriers, but overcomes them only by means which again place these barriers in its way and on a more formidable scale" (Marx, 1977, Vol. III:250). Each crisis occurs at a higher level of accumulation and thus a higher rate of the organic composition of capital. Consequently, the problem of restoring the conditions necessary for renewed profitable accumulation become more difficult.

Above all, the most significant barrier, for Marx, to capital accumulation lies in the antagonistic relationship between capital and wage-labour - in the fact that the relations of production involve an exploitative relationship organized around the expansion of capital. As Marx states:

> The real barrier of capitalist production is capital itself. It is that capital and its self-expansion appear as the starting and the closing point, the motive and the purpose of production: that production is only production for capital and not vice versa, the means of production are not mere means for a constant expansion of the living process of the society of producers (Marx, 1977, Vol. III:250).

In other words, capitalist production is an end-in-itself. It is production for *profit*, not for *the satisfaction of human needs*. For this reason, crises are an *endemic* feature of the capitalist production process.

The foregoing discussion has obviously covered a wide range of material pertinent to an understanding of Marxist political economy. Admittedly, the discussion has not provided an all-inclusive exposition of Marx's work in this area. And no attempt has been made to offer a critical appraisal of those aspects which have been covered. Nevertheless, insofar as our purpose here has been to explain the primacy of the economic level as a determinant of class relations in capitalist society according to Marxist principles, then our initial intention has been realized. For the above discussion makes it clear that class relations in capitalist society are inextricably bound up with the production process. These relations are inherently antagonistic in nature and are manifested in the fundamentally exploitative relation between capital and wage-labour. Moreover, it has also become clear that the capitalist production process possesses its own momentum and its own internal logic. The dynamic tendencies of capital accumulation and its proneness to crisis generate specific needs and requirements of the capitalist system at various historical points in its development in order to restore the conditions for the continuing profitable accumulation of capital and contain the class struggle.

Clearly, the 'needs' and 'requirements' of the capitalist production process and the ever-present class conflict hold significant implications for the role of the state in a capitalist society. Indeed, given that the basic materialist categories in Marx's thought have been sufficiently explicated, we are now in a position to proceed with an examination of the state in capitalist society. To be more specific, the preceding discussion has served to generate certain questions pertaining to the capitalist state, that is: What is the link between the state and the capitalist production process? How are the requirements of capital accumulation mediated by the state? Moreover, what is the relationship between state power and class power under capitalism? By what means does the state serve the interests of the dominant class?

The purpose of the following chapter will be to address these questions. In general terms, the discussion will focus on the nature of the state-society relationship under capitalism with respect to the form which the state takes in a capitalist society and the content of its activities.

Chapter Five

The State in Capitalist Society

The state in capitalist society is, above all, a capitalist state. Its primary purpose is to maintain a certain set of relations: the capital relation. The capital relation is an inherently exploitative one, premised as it is on the attempt by capital to coerce labour to produce for its own profit. As such, since the central purpose of the state is to maintain and perpetuate a set of relations which, in the long run, benefit only the capitalist class, then why does it not appear more directly as a capitalist state (or a state of the capitalists)? In other words, why is it that the state in capitalist society has the 'appearance' of a 'nation state'?[1] Pashukanis has phrased this question as follows:

> Why does the dominance of a class not continue to be that which it is - that is to say, the subordination in fact of one part of the population to another part? Why does it take on the form of official state domination? Or, which is the same thing, why is not the mechanism of state constraint created as the private mechanism of the dominant class? Why is it disassociated from the dominant class - taking

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[1] It should be noted here that Marx used 'appearances' in a strong sense. As Hall and his colleagues (1978:198) have commented: "The notion of 'appearance' as used in Marx is not the same as the common-sense meaning of the term 'false appearances', if by that we understand something which is simply an optical illusion, a fantasy in men's imagination. The term 'appearance' in Marx implies a theory of darstellung or representation - a theory that a social formation is a complex unity, composed of different levels and practices, where there is no necessary identity or correspondence between the effects a relation produces at its different levels. Thus 'appearances' in this sense are false, not because they do not exist, but because they invite us to mistake surface effects for real 'relations'."

> the form of an impersonal mechanism of public authority isolated from society (Pashukanis, 1951:185)?

The question just posed is seen as the appropriate starting point for unravelling a theory of the capitalist state. At its core lies the issue of the form which the state takes in a capitalist society. The discussion which follows, therefore, begins with an analysis of the state form under capitalism. More specifically, it will be argued that the key to understanding the form of the state lies in the particular nature of social relations in capitalist society and the corresponding separation of the economic and political spheres under capitalism.

A. State Form Under Capitalism

As discussed in Chapter Three, an important distinguishing feature of domination in capitalist society is that it is mediated through commodity exchange. The 'commodification' of labour power involves two kinds of 'freedoms'. One is that exploitation takes place through the 'free' sale and purchase of labour power. The other is that the worker is separated from control and possession of the means of production and is therefore 'free' of constraints. As such, the worker is not directly subject to the capitalist. Rather, his subjection is mediated through the sale of his labour power as a commodity on the market.

Marx made the point that labour power, as a commodity, becomes 'fetishized'. That is, under capitalist production, the social activity of human beings takes a reified form or, as Marx put it, social relations appear as a "fantastic form of a relation between things" (Marx, 1977, Vol. I:77). They do not appear as relations of power or force but rather they appear as relations of free and equal individuals. This 'fetishization' of social relations is tied to the fact that capitalist society, unlike any previous form, is characterized by a separation of economic and political spheres.[2]

To elaborate, under capitalism exploitation takes place largely in the 'economic' sphere by 'economic' means. The appropriation of surplus labour is not conditioned by an 'extra-economic' relationship. As Wood states:

> Direct 'extra-economic' pressure or overt coercion are, in principle, unnecessary to compel the expropriated labourer to give up this surplus labour. Although the coercive force of the 'political' sphere is ultimately necessary to sustain private property and the power of appropriation, 'economic' need supplies the immediate compulsion that forces the worker to transfer surplus labour to the capitalist in order to gain access to the means of production (Wood, 1981:80).

By way of contrast, pre-capitalist formations are characterized by 'extra-economic' modes of surplus extraction (for example: political, legal or military coercion, traditional bonds and duties, and so on). There is an outright demand for the transfer of labour to a lord or the state by means of rent, tax, or labour services. Marx, in making this distinction, noted that in feudal society

> Personal dependence here characterizes the social relations of production just as much as it does other spheres of life organised on the basis of production. But for the very reason that personal dependence forms the ground-work of society, there is no necessity for labour and its products to assume a fantastic form different from their reality. They take the shape, in the transactions of society, of services in kind and payments in kind . . . the social relations between individuals in the performance of their labour, appear at all events as their own mutual personal relations, and are not

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[2] As Polyani notes in his analysis of the market society: "A self-regulating market demands nothing less than the institutional separation of society into an economic and political sphere" (Polyani, 1957:71).

> disguised under the shape of social relations between the products of labour (Marx, 1977, Vol. I:81-82).

Whereas, with capitalism, the forfeit of surplus labour is an immediate condition of production itself. It takes place automatically by means of the market. As Hirsch puts it:

> In capitalist society the appropriation of surplus value and the preservation of the social structure and its cohesion do not depend on direct relations of force or dependence, nor do they depend directly on the power and repressive force of ideology. Instead, they rely on the blind operation of the hidden laws of reproduction (Hirsch, 1978:61. emphasis added).

Thus, direct political coercion is not required. Quite the opposite, what is required is the 'appearance' of political equality. That is, for the 'free' sale and purchase of labour power, capitalist and worker must be treated identically before the law as free and equal partners. In this respect, the very existence of 'political freedom' becomes a necessary condition for exploitation to take place, since the 'freedom' provided by the political sphere leads to a bifurcation of the worker into 'worker' and 'citizen', which thus serves to conceal or mask the capital relation. In short, inequalities in the economic sphere are transformed into 'equality of all' in the political sphere. Capitalist exploitation thus provides the foundation on which the structure of political 'freedom' and 'equality' can be built,

> . . . for it is a complement to the 'freedom' of the worker that in capitalism (unlike other societies) the political status of the individual is in no way determined by his place in the relations of production. The equality of political status enshrines and reinforces the inequality of its essential basis (Holloway and Picciotto, 1977:80. emphasis added).

This separation of economic and political spheres finds its institutional expression in the state structure.[3] As Gough notes:

> The very individualism of capitalism, the fact that all subjects are formally free and equal to pursue their own ends, requires a separate structure, the state, to represent their 'common interest' (Gough, 1979:40).

Even though direct political coercion is not required for exploitation to proceed, coercive power and a structure of domination are still essential aspects of the exploitative relation. For example, "(a)bsolute private property, the contractual relation that binds producer to appropriator, the process of commodity exchange - all these require the legal forms, the coercive apparatus, the policing functions of the state" (Wood, 1981:81). But because the economic and political spheres are separated, the state under capitalism takes on a special character, since the coercive power which ultimately supports capitalist exploitation is no longer squarely in the hands of the capitalist class. In essence, the two 'moments' of capitalist exploitation - appropriation and coercion - have been allocated, on the one hand, to the 'private' appropriating capitalist class and, on the other, to the 'public' apparatus of the state. Far from being detrimental to capital's interests, this situation offers certain advantages to the capitalist class.

For one, with the separation of private appropriation from public duties, the capitalist class is under no obligation to perform more 'social' or 'communal' functions. In pre-capitalist formations, the fusion of economic and political spheres meant not only that surplus extraction was an 'extra-economic' transaction divorced from the production process itself, but that the power to appropriate surplus labour, belonging to the state or lord, was bound up with the performance of administrative, judicial and military functions (c.f., Wood, 1981). With the separation of economic and political spheres under capitalism, such 'duties' no longer fall on the appropriating class.

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[3] It should be noted here that 'structure' is a much broader and more complex notion than 'organization'. When the state is conceived of as a 'structure', it is no longer regarded as a tightly bounded instrument (organization) which can be 'controlled'. Rather, it is seen as a complex network of institutions, organizations and social relationships. See: Wright, 1978.

For another, although the capitalist class has lost direct political powers to the state, its control over the production process - the power of surplus extraction and the capacity to organize and intensify production directly for its own purposes - makes for a system which answers immediately to the demands of the exploiter. Stated differently,

> The bedrock of the capitalist economy is the legally sanctioned power of the directors of enterprise to organize production, to determine the rules that regulate workers' productive activities, and to hire and fire accordingly; all this is done with only moderate restriction imposed by workers' organizations and government regulations (Bowles and Gintis, 1976:82-83).

With the separation of economic and political spheres, the state is afforded a degree of relative autonomy. It becomes a separate entity, detached from capital. Miliband describes this 'relative autonomy' of the state as follows:

> . . . it simply consists in the degree of freedom which the state . . . has in determining how best to serve what those who hold power conceive to be the 'national interest', and which in fact involves the service of the interests of the ruling class (Miliband, 1977:83. emphasis added).

Miliband's statement raises an important question that has yet to be addressed. Thus far an explanation has been offered as to why the state takes the form of a 'nation state' by pointing out a peculiar feature of capitalism - the separation of economic and political spheres.

Yet, this does not explain why - if the state is an 'autonomous' and separate entity - does it remain a class state? In other words, why should the state serve the interests of the capitalist class? This question raises issues pertaining to the nature of the relationship between state power and class power under capitalism.

The endeavor to delineate the linkages between the state and the capitalist class has produced three different modes of explanation.[4]

The first concerns the idea that the personnel of the state belong to the same class - the capitalist class - and therefore share common ideological and political positions, values and perspectives.[5]

The second relates to the power which the capitalist class - by virtue of its control over economic resources - can wield over the state. That is, given the imbalance of class power in capitalist society, the capitalist class is afforded greater strength and influence as a 'pressure group'.

Each of these two explanations has its merits. For example, the executive branch of the state has tended to be run by individuals who, by and large, share common class origins (c.f., Olsen, 1977). Moreover, capitalist enterprise does operate as an influential 'pressure group', thereby enabling it to command considerable support from the various institutional sectors within the state structure (c.f., Clement, 1975). Nevertheless, there are compelling reasons for dismissing both of these explanations, in the sense that neither is capable of standing on its own.

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[4] See Miliband, 1977:66-74.

[5] This is essentially the thrust of the 'instrumentalist' position outlined in Chapter Three.

The first becomes deficient once it is recognized that the class background of the state personnel can change over time. That is, there is not always a direct correspondence between those individuals occupying positions of power within the state apparatus and membership in the capitalist class. According to Miliband, for example:

> In all capitalist countries, members of the petty bourgeoisie, and increasingly of the working class as well, have made a successful career in the state service, often at the highest levels (Miliband, 1977:71).

The second explanation is called into question when one considers that the class power of capital can at times be countered by the class power of labour. That is, the working class has won concessions from the state.[6]

Consequently, it is the third explanation which is offered here as the most powerful. It is one which revolves around the structural constraints which the capitalist mode of production imposes on the state.[7] Seen from this perspective, the state - as a capitalist state - cannot ignore the requirements of capital accumulation and reproduction. In other words, the state is detached from capital (here meaning the capitalist class), but not from the capital relation. It is not 'autonomous' in the sense of obeying its own 'independent laws of motion'. Regardless of who occupies positions of power within the state structure, the state is constrained by the imperatives of the capital accumulation process. Hence,

> . . . the bourgeois state as an instance raised

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[6] Marx's examination of the Factory Acts and ten hour day legislation is probably the clearest example here.

[7] This is essentially the thrust of the 'structuralist' position outlined in Chapter Three.

> above the direct production process can only maintain its form if the capital reproduction process is guaranteed and its own material basis thus secured. This will necessarily manifest itself as the specifically political and bureaucratic interest of the direct holders of state power and their agents in the safeguarding of capital reproduction and capital relations. This is why the bourgeois state must function as a class state even when the ruling class or a section of it does not exert direct influence over it (Hirsch, 1978:66).

It should also be emphasized, however, that _within_ these constraints there _is_ room to manoeuver. That is, the opportunities exist, at different historical points in time, for competing strategies and policies to emerge. In other words, the state, operating under these constraints, does have several options open to it in terms of _how_ the imperatives of accumulation impinging upon it will be dealt with. In a similar vein, the limits of state action are not rigidly fixed. For example, the policing and social control powers of the state can vary from one period to the next - and even within the same historical period - depending upon the individuals or groups against whom those powers are directed.[8]

B. The Content of the State's Activities

The above explication of why the state in capitalist society takes the form it does opens the way for a further understanding of the state in terms of the _content_ of its activities. For the separation of economic and political spheres, and the corresponding need for the

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[8] It should be stressed that to advocate this 'structuralist' position does not deny or dismiss the significance of individual actors. What it does serve to showcase, however, is that, depending upon the particular stage of historical development, the options available to those actors will be constrained and limited by structural dynamics. It is in this sense that one can view individuals as not simply 'social animals' - but 'political animals' as well.

'appearance' of political equality in order for capitalist exploitation to proceed places certain demands upon the state (not the least of which is that of maintaining its appearance as a 'nation state'). Likewise, the relative autonomy of the state structure, colored as it is by the structural constraints of the capital accumulation process, means that the state is continually confronted with the need to maintain and reinforce its material basis. As such, what is required is an examination of the particular functions which the state performs in capitalist society.

Broadly speaking, the state functions as an 'organizer' in capitalist society. This is due, in large measure, to the fact that the state is situated squarely in the center of the class struggle: ". . . it is permanently and pervasively present in the encounter between conflicting groups and classes - these never meet, so to speak, on their own. The state is always involved . . ." (Miliband, 1977:90). Its role in this conflict is a mediating and conciliating one. But the state acts not as a neutral arbiter, since its overarching directive is the reproduction of capitalist social relations. The question posed, then, is how is this directive realized?

Within the current Marxist literature on the state, the state's activities have most commonly been discussed under two general headings: accumulation and legitimation. According to O'Connor (1973A and 1973B), 'accumulation' refers to the activities in which the state is involved, either actively or passively, to aid in the process of capital accumulation. In short, the state must try to maintain and create conditions under which profitable accumulation of capital is possible. 'Legitimation', on the other hand, refers to those activities of the state which are designed to maintain and create conditions of social harmony. That is, "(i)t must try to win the loyalty of economically exploited and socially oppressed classes and strata of the population to its programs and policies, and to the imperatives of accumulation; it must attempt to legitimate the social order" (O'Connor, 1973B:79).

It should be recognized that these two 'tasks' are mutually contradictory ones in that, for example,

> A capitalist state that openly uses its coercive forces to help one class (the capitalist class) accumulate capital at the expense of the other classes loses its legitimacy and hence threatens the basis of its loyalty and support. But a state that ignores the many and varied problems involving accumulation and profits is self-destructive in the sense that it threatens its own material foundations - it risks drying up the source of its power, the surplus production capacity of the economic system and the taxes that are drawn from this surplus (as well as other forms of capital) (O'Connor, 1973A:6).

Indeed, the inherent contradiction between accumulation and legitimation has found its ideological expression in the fact that the state in Western capitalist societies has typically been organized around the competing principles of 'liberalism' and 'democracy' (c.f., Macpherson, 1965). For, while 'liberalism' is an ideology designed to promote the market society and all that goes along with it, 'democracy' expresses a political ideal which combines the principle of social equality with political participation (c.f., Wolfe, 1977). Clearly, to reconcile these two competing principles presents a formidable task.[9] At the very least, the attempt to 'balance' the claims of liberalism with those of democracy places considerable burden on the state's resources. Its success in this regard can be measured in terms of how well the state operates with respect to accumulation and legitimation.

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[9] As Macpherson has noted, however, these conflicting ideologies were, in part, reconciled by the manner in which they became institutionalized. For the capitalist state, historically, was, first and foremost, a liberal state. The democratic franchise was installed only after the liberal society and liberal state were firmly established: democracy came as a "top dressing." For a cogent discussion of these historical developments see: Macpherson, 1965.

Moreover, it should also be recognized that the relationship between accumulation and legitimation is dialectical such that nearly every agency or institution within the state is (often simultaneously) involved in both activities. For the present purposes, however, the terms 'accumulation' and 'legitimation' serve as useful categories for separating out the functions which the state, as the 'organizer' in capitalist society, performs.

As will be seen shortly, the state's endeavor to maintain and create conditions under which profitable accumulation of capital is possible spans a variety of different spheres. At its most basic level, however, accumulation involves the creation and maintenance of the general material conditions for production - the 'infrastructure' necessary for capital accumulation to proceed. The manner in which these material conditions are met by the state will obviously vary according to the particular stage of historical development. As Poulantzas has noted:

> The history of state interventionism is neither a homogeneous history covering all the social formations, nor a linear history in which the State progressively accumulates and appropriates certain intrinsically economic activities or fields: it is rather a history of uneven development, unfolding in accordance with the given formations and marked by both steps forward and steps backward (Poulantzas, 1978:180).

Generally speaking, however, the state's involvement in the accumulation process will depend upon the following factors: the stage reached in the development of productive forces; the development of capital (concentration); and the development of the power of individual capitals (centralization). Above all, state intervention will depend upon the nature and extent of accumulation crises. For example, under the effect of the law of the falling rate of profit:

> The decline in the rate of profit leads more and more individual capitals to withdraw from the production of the 'general material conditions of production' for other capitals when it becomes insufficiently profitable or brings losses for individual capitals, forcing the state apparatus to take under its direction (nationalization or quasi-nationalization) these areas of production for the purpose of safeguarding the reproduction process as a whole (Hirsch, 1978:93).

In this respect, the 'infrastructure' furnished by the state will include material conditions of three kinds.

The first is those that require capital outlays which cannot be realized by individual capitalists. Capital, under the pressure of competition, is forced to use resources maximally, regardless of material and social consequences. Because of this, it becomes necessary for the state to operate as an 'economic organizer', which it is able to do since the state is not as subservient to the necessities of surplus production (as are the capitalists). In Engel's words, the state becomes "the idealized, total capitalist." It serves the interests of the protection, consolidation and expansion of the capitalist mode of production as a whole, over and against the conflicting interests of the "many capitals" (Engels, 1954:386).

The second is those conditions whose establishment or management becomes too unprofitable or too risky for capital to provide. For example:

> Viewed in terms of its material function for the social labour process, the functions of the railroad . . . are the same today as they were a hundred years ago. Yet the railroad was privately operated in the nineteenth century and was a profitable form of capital investment, whereas today the

> railroad is definitely an unprofitable business for capital and thus represents an appropriate sphere of action for the bourgeois state (Altvater, 1973:100).

The third involves those material conditions which may be very 'profitable' for capital to undertake, but which the state takes over since their control by individual capitals (operating according to their own short-term interests) would threaten the more general long-term interests of the capitalist class as a whole.

> Assumption of these functions by any one individual capital, or even a fraction of capital, involves considerable risks: the functions themselves may be quite drastically distorted in order to serve particular, short-term profits. (This is shown very clearly by the actions of oil companies, which aroused such a response in capital as a whole that the State - even Carter in the USA - was forced to take responsibility in the realm of energy.) The deflection may become so sharp that the entire productive apparatus tends to be restructured to the exclusive advantage of certain capitals and to the grave detriment of other capitals or fractions of capital (Poulantzas, 1978: 181-182).

Establishing these general material conditions for production is quite clearly an 'economic function' performed by the state. In addition, the state's accumulation activities include what can be referred to as a 'juridical function'. To elaborate,

> . . . a society based on private capital and 'free labour' in the economic sphere requires the juridical relations of private property and the contract. Hence it requires a legal code in which these relations are institutionalised; a legal ideology in which these economic motives can assume the form of 'juridical motives'; a juridical apparatus which can give the economic relation a legal expression and sanction (Hall et al., 1978:201).

As such, the state acts juridically with respect to accumulation by establishing a set of rules which organize capital exchanges and provide a cohesive framework in which commercial encounters can take place.

Further to this, profitable capital accumulation requires the maintenance of a competitive labour force. As Pentland has emphasized, "a capitalistic labour market can only appear and persist if labour tends constantly to be in surplus supply" (Pentland, 1959:456). Much of the responsibility for meeting this demand has fallen to the 'public' apparatus of the state. While the methods by which this is accomplished by the state will vary according to historical circumstances, one option which is available is the continual refurbishing of the industrial reserve army as is necessary, for example, through the immigration policies and practices of the state. Similarly, the cost of labour can be held down and the capital accumulation process enhanced by the formulation of state policies and practices which encourage the segmentation of the labour force.[10]

But more than just a concern with the supply of labour, the state has to also be concerned with the condition of labour and the consequences of the developing mode of production. In other words, the state performs a social or communal function with respect to accumulation. This refers, essentially, to the state's role in meeting social needs under capitalism. To illustrate:

> . . . the trend towards more wage-labour, greater urbanization, the geographical movement of the population and the break-up of the extended family have all intensified the need for collective provision against insecurity. Furthermore, capitalist industrialization increases the sources of insecurity and dependence (for example, unemployment, industrial injury and disease) and necessitates the state provision of certain services to compensate the casualties for their suffering (Gough, 1975:73).

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[10] For example, a 'split' labour market in which (usually) women or racial minorities are paid less than others can function to: keep the total wage bill down; keep the wages of organized groups in the working class relatively high (and thus keep them content); and keep the working class divided. For a discussion of labour market segmentation see: Bonacich, 1972; Szymanski, 1976; and Edwards et al., 1975.

Such developments have resulted in the emergence of a 'welfare' state. That is, more and more the state has taken on the responsibility for the reproduction of labour power and the maintenance of the non-working population in capitalist societies (c.f., Gough, 1979:44-45).[11] Far from increasing the 'egalitarianism' of the system, the 'welfare' activities of the state function to enhance the accumulation process and thus reproduce capitalist social relations. This is so for at least three reasons.

First, providing 'concessions' or 'benefits' to the less privileged serves to dampen radical movements within the working class designed to challenge the system.[12] That is,

> . . . the relatively low costs incurred by the dominant class in the provision of welfare is more than offset by the prevention of a more drastic kind of redistribution. The introduction of social security legislation by Bismark, for example, was a quite explicit attempt to undermine the growing appeal of Marxian socialism among the German working class (Parkin, 1971:124-125).

Second, welfare and social provisions to the working class improve the 'quality' of labour power and thus increase the efficiency of capitalist production. Workers who enjoy good health, housing and basic education, for example, will be more productive than those who live in squalor, ignorance and disease.[13] Moreover, "(u)nemployment relief is itself directly geared to the reproduction of the capitalist work ideology . . . in no case must assistance allow claimants to forget the abject and humiliating character of the unemployed worker's situation" (Poulantzas, 1978:187).

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[11] Clearly, 'civil society' also plays a major role in the reproduction of the labour force - the family and the educational system being the two major spheres to perform this function. While the state has increasingly intervened in these spheres, it would be a mistake to suggest, as Althusser (1971) does, that they are part of the state apparatus. For some critical comments on Althusser's assertions see: Anderson, 1977 and Sumner, 1970.

[12] The interwoven nature of the accumulation and legitimation activities of the state becomes quite evident here since, in addition to feeding the needs of the accumulation process, fulfilling 'social needs' aids in producing social harmony and diffusing class conflict.

Third, the payment for and use of social services does not necessarily produce a net advantage to the working class in that:

> Social security contributions in most welfare states tend to be either regressive, by requiring a flat rate payment, or proportional to income. The effect of this is to impose a relatively greater burden on lower-income groups than does direct taxation (Parkin, 1971: 125).

It cannot be denied that many of the social needs provided for by the state are the result of concessions gained by the working class. Indeed, many of the reforms which have been instituted came only after considerable struggle on the part of working class members and with a corresponding resistance on the side of capital. Nevertheless, as Gough has noted, "(s)ocial policies originally the product of class struggle will, in the absence of further struggle, be absorbed and adapted to benefit the interests of the dominant class" (Gough, 1979:76).

Similarly, at certain historical conjunctures, the interests of both capital and labour will converge as, for example, in the case of the expansion of higher education. But even so, the 'class-alliance' is a temporary one, and founded on quite different goals. In this context, "(a)ll measures taken by the capitalist state, even those imposed by the popular masses, are in the last analysis inserted in a pro-capitalist strategy or are compatible with the expanded reproduction of capital" (Poulantzas, 1978:185).

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[13] The contradictory nature of the state's activities, and capitalism as a whole, surfaces here. Improving the standard of living of the worker (necessitated by the demands of the production process) opens the way to increased expectations and demands of the working class, thus heightening class conflict.

What is implied by the above, then, is that concessions made by the state to the working class cannot simply be taken at their 'face value'. The analyst must be cognizant of both the manifest and latent functions which are being served by those concessions.

To summarize, the state acts with respect to accumulation by fulfilling a number of different functions: it serves as the 'economic organizer' for capital by ensuring the maintenance of the general material conditions for production; it provides the juridical apparatus which sanctions and coordinates capital exchanges; and it maintains a competitive labour force through, among other things, the provision of social welfare measures.

Clearly, maintaining the conditions for profitable capital accumulation, necessitated by the inherent tendency for accumulation crises to occur, is no "easy task." In many respects, the state, in endeavoring to secure its material basis, becomes "caught in its own trap." As Poulantzas notes:

> The metaphor is not too strong: from now on the state can neither go backwards nor forwards, can neither stand outside nor control the heart of the economy. At one and the same time, it is driven to do both too much (crisis-inducing intervention) and too little (being unable to affect the deep causes of crises). The State is constantly oscillating between the two terms of the alternative: withdraw and/or get further involved. It is not an all-powerful State with which we are dealing, but rather a State with its back to the wall and its front poised before a ditch (Poulantzas, 1978:191).

Turning to the legitimation activities of the state, there is a tendency to treat legitimation as simply the opposite of accumulation, that is, as simply a "grab bag" category such that everything that is not obviously related to accumulation falls into it (c.f., The Bay Area Kapitalistate Group, 1978). This tendency has the effect of not only undermining the analytical usefulness of the concept, but downplaying the significance of the tasks implied by it as well. The import and utility of the concept of legitimation cannot be underestimated. For 'legitimation' serves as the connecting link between 'ideology' on the one hand and the 'state' on the other. It is only through an appreciation of the legitimation activities of the state that an understanding of the processes of domination (class control) and resistance (class conflict) can be reached.

Essentially, 'legitimation' refers to the efforts of the state in containing and channeling one of the greatest threats to the accumulation process and thus capitalism as a whole: class conflict. As long as the state manages to convey an image of an organization of power that pursues common and general interests, is responsive to justified demands, and allows equal access to that power, only then can the state function in its specific relation to accumulation (c.f., Offe, 1975). In essence, then, the state carries the responsibility for the 'manufacture of order' in capitalist society.

The type of order which the state imposes is, following Gramsci (1971), an 'order of cohesion'. But 'cohesion' can take more than one form. Conceptually speaking, the legitimation activities of the state can be said to range on a continuum from 'co-optation' (the production of consent) at the one end to 'coercion' (domination by force) at the other.

To elaborate, one of the basic characteristics of any state form is the monopoly it possesses over the use (or potential use) of force in defending and maintaining the existing social relations in society.[14] Coercion is thus an 'obvious' means which the state has at its disposal to contain class conflict and hence maintain order. But also obvious is the recognition that no state can successfully and over any prolonged time period perpetuate its material foundation if reliance is given solely to repressive or coercive tactics. The state, therefore, must endeavor to produce consent. Indeed, even the 'coercive' side of the state works best when it is perceived as legitimate coercion, based on the consent of the majority. As Hay asserts, "(t)he sanction of the state is force, but it is force that is legitimized, however imperfectly, and therefore the state deals also in ideologies" (Hay, 1975:62).

'Co-optation' involves the state's role in maintaining the dominance of the capitalist class through the universalization of capitalist class interests. It stems from Marx's notion that in all class societies the dominant class develops or takes over ideological forms which legitimate its position of dominance. This idea is reflected in the oft-quoted passage from the German Ideology:

> The ideas of the ruling class are in every epoch the ruling ideas, i.e., the class which is the ruling material force of society, is at the same

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[14] The state's monopoly over the legitimate use of force has been recognized by most writers as one of the central defining features of the state. Weber (1968:54), for example, offers the following definition: "A compulsory political organization with continuous operations will be called a 'state' insofar as it successfully upholds the claim to the monopoly of the legitimate use of force in the enforcement of its order."

> time its ruling intellectual force. The class which has the means of material production at its disposal, has control at the same time over the means of mental production, so that thereby, generally speaking, the ideas of those who lack the means of mental production are subject to it (Marx and Engels, 1970:64).

Marx's treatment of ideology serves to showcase the role of particular forms of ideology in class societies. He also emphasized that ideas could not be taken at their 'face value', but had to be studied in relation to the social relationships in which they were embodied. Moreover, the above passage points to the fact that, in capitalist societies,

> . . . the largest part of what is produced in the cultural domain in these societies is produced by capitalism; and is also therefore quite naturally intended to help, one way and another, in the defense of capitalism (Miliband, 1977:50).

Yet, for the present purposes, Marx did not go far enough in explaining how domination is maintained, particularly with respect to the state's role in this process. One theorist who has shed some light on this issue is Gramsci (1971), especially in terms of his use of the concept of hegemony.

Hegemony refers to:

> . . . an order in which a certain way of life and thought is dominant, in which one concept of reality is diffused throughout society in all its institutional and private manifestations, informing with its spirit all taste, morality, customs, religious and moral connotation (Williams, 1960:587).

Gramsci used the concept in a number of different contexts, one of which saw hegemony as the "mechanism of bourgeois rule over the working class in a stabilized capitalist society" (Anderson, 1977:19). Further to this, he made a point of stressing that hegemony was not an 'automatic' condition, a mere 'superstructural' derivative. Rather, hegemony was the result of a pervasive effort conducted on two spheres of the superstructure: civil society (which includes the 'private' organizations of the church, schools and communications) and the state (Gramsci, 1971:12).[15]

The exercise of hegemony entails simultaneously, a two-sided process. On the one hand, it involves the efforts of the dominant class to maintain its position of dominance. Gramsci recognized that there was no such simple formula as the ruling class. Under different historical conditions, the objective interests of a 'fundamental class' in production could only be realized through the political and ideological leadership of a fraction of that class or an alliance of class fractions. In short, while private ownership of the means of production is a necessary condition for capitalist domination, it is not a sufficient condition. The capitalist class is continually confronted with the need to organize at the political level. On the other hand, hegemony involves the "acceptance" of domination on the part of the subordinate class. It requires the active consent of those who are being ruled.

The success of the capitalist class in maintaining its hegemonic rule will depend to a great extent on the dissemination of an ideology within the sphere of 'civil society' which justifies its position of dominance. As Panichas has commented:

> A well-established ideology provides the sanction for the firmly entrenched socioeconomic conditions

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[15] Gramsci denotes 'civil society' as a system of superstructural institutions that is intermediary between the sphere of economic relations and the state, thus excluding factories or plants. Anderson notes that this definition can be described "as a refinement of its use in the late Marx, explicitly dissociating it from its economic origins" (Anderson, 1977:35).

> which nurtured it, and one measure of the power and success of an ideology (though no measure of the truth of its tenets) is the extent and degree to which its claims are uncritically held (Panichas, 1978:127).

Also important, however, is the role which the state plays in the exercise of hegemony. For the 'relative autonomy' of the state makes it both an ideal organ for establishing alliances among the capitalist class fractions and a mechanism through which the "support" of the working class can be won: a support which could entail certain costs to the capitalist class, since

> If hegemony was to be secured without destroying the cohesion of the social formation, and without the continual exercise of naked force, then certain 'costs' might have to be extracted from the dominant class to secure consent to its social and political base. Only the state could, when necessary, impose these political costs on narrower ruling-class interests (Hall et al., 1978:204).

Indeed, as Gramsci was well-aware, the liberal democratic form of state is one uniquely suited to fostering hegemonic rule under capitalism. Liberal democracy, to cite Anderson (1977:30), is "the principle ideological lynchpin of Western capitalism." It provides an elaborate structure of political representation in which social interests can be expressed and organized through Parliament and political parties. The "impartial arbitration" of an executive "who reigns but who does not govern" helps to ensure the consent of the governed while masking the real nature of power relations in capitalist society (c.f., Merrington, 1968). Moreover, the individualization afforded by "citizenship" functions to diffuse the class struggle: classes become atomized into a mass of individual citizens and class consciousness is broken down into 'public opinion' expressed individually by means of the vote. The novelty of the consent which results is that

> . . . it takes the fundamental form of a belief by the masses that they exercise an ultimate self-determination within the existing social order. It is thus not acceptance of the superiority of an acknowledged ruling class (feudal ideology), but credence in the democratic equality of all citizens in the government of the nation - in other words, disbelief in the existence of any ruling class (Anderson, 1977:30).

Hegemony is the 'normal' form of control in capitalist society. However, because it is not an 'automatic' condition, and because of the contradictory nature of the system in which it operates, hegemonic control is subject to periodic 'crises'. To cite Gramsci:

> . . . the crisis of the ruling class' hegemony, which occurs either because the ruling class has failed in some major political undertaking for which it has requested, or forcibly extracted, the consent of the broad masses . . . Or because huge masses . . . have passed from a state of political passivity to a certain activity, and put forward demands which, taken together, albeit not organically formulated, add up to a revolution. A 'crisis of authority' is spoken of: this is precisely the crisis of hegemony, or general crisis of the State (Gramsci, 1971:210).

During a 'crisis of hegemony', the basis for the legitimacy of the system is called into question. Moreover, it is marked by a movement in the operation of the state away from 'consent' and toward the pole of 'coercion'. State intervention thus becomes more overt and more direct. In short, the repressive power of the state comes to the surface. As Miliband notes:

> The scope and severity of the repressive power of capitalist regimes cannot be overestimated, notwithstanding long traditions of constitutionalism and a hallowed rhetoric of civic freedom. In periods of serious social conflict, this repressive aspect of the bourgeois democratic state is very quickly deployed; and there are large sections of people to whom this aspect of the

> bourgeois democratic state is very familiar at all times, including times of relative social peace (Miliband, 1977:91).

Hence, the legitimation activities of the state broadly refer to the state's efforts to manufacture order and social harmony in capitalist society. The state is a main site for the exercise of hegemony under capitalism. But while domination is most successful when founded on co-optive measures which produce the active 'consent' of the dominated, the state can, if need be, call on the coercive mechanisms which it has at its disposal (for example, the police and the military) to contain any threats to the system. Obviously, the particular fashion in which legitimation is carried out by the state will depend upon the level of class conflict at any point in time and the perception of those individuals who wield state power as to what options or strategies are most feasible.

C. Summation

The above discussion has been aimed at delineating a theory of the capitalist state. The explanation offered has been organized around two axes: one being the form of the state in a capitalist society and the other the content of the state's activities. By way of summarizing this discussion, the following points may be offered:

Regarding the form of the capitalist state, two main factors have emerged:

> The first relates to the nature of social relations under capitalism. Because capitalist domination is mediated through commodity exchange, labour power, as a commodity, becomes 'fetishized'. As such, social

> activity under capitalism takes on a reified form, appearing as relations between 'free' and 'equal' individuals.
>
> The second factor, which is tied to the first, is that there is a tendency toward a separation of economic and political spheres under capitalism. Since the appropriation of surplus value takes place 'automatically' by means of the market, 'direct' political coercion is not required. Rather, capitalist production requires the 'appearance' of political equality. This means that the two 'moments' of capitalist exploitation are separated into the 'private' class of capitalists and the 'public' apparatus of the state.
>
> Consequently, the state takes on a 'special character', since the coercive power which ultimately supports exploitation is no longer in the hands of the exploiting class. The state becomes a 'relatively autonomous entity'. But while it is separate and detached from capital, the state is not autonomous of the capital relation, that is, it is constrained by the structural limitations imposed by the productive process.

Regarding the content of the state's activities, it was noted that the state functions, in general terms, as an 'organizer' in capitalist society. Its role is to mediate between the two main conflicting classes with the aim of reproducing capitalist social relations.

As such, the activities of the state have been divided, for analytical purposes, into two categories:

> Accumulation: here, the state can be said to 'organize' in three main ways: 'economically', by ensuring the creation and maintenance of the general material conditions for production; 'juridically', by providing the legal framework in which capitalist exchanges can take place; and 'socially', by maintaining and reproducing a competitive labour force.
>
> Legitimation: here, the state is responsible for the 'manufacture of order'. Its activities range from 'co-optation', which essentially refers to the maintenance of hegemonic control and the universalization of capitalist class interests through, for example, liberal democratic means, to 'coercion', which involves the use of force by the state, particularly during periods when a 'crisis of hegemony' prevails.

The purpose of this chapter has been to outline a broader theory of the capitalist state from which a theory of law and crime can be derived. It is now time to proceed with this task. Throughout the above discussion, it can be recalled that the law entered into the analysis of the state at a number of points, the clearest example being the role of the state as 'juridical organizer' under capitalism. But to fashion a theory of law and crime, the particular placement or role of law within the overall structure of the state needs to be more clearly specified. In other words, just as it was necessary to specify the form which the state takes in a capitalist society and the content of its activities, so too is it necessary to specify the form and content of law. The purpose of the next chapter, therefore, will be to delineate a Marxian theory of law and crime based upon the logic and the parameters of the theory of the state offered above.

Chapter Six

A Marxian Theory of Law and Crime

> It is not possible to conceive of the complex division of labour of a capitalist order and the totality of its social relations without law. Law is embedded, inextricably, in the organisation and culture of our social existence. And just as that social existence presents a many-sided reality, so too does the law (Kinsey, 1978:202).

As the above quotation indicates, law in a capitalist society presents a "many-sided reality." Indeed, it is this "many-sided reality" which a theory of law and crime must unveil. The aim of the present chapter is to carry out such a task. In the discussion which follows, the analysis will center on the role of law - particularly the criminal law - under capitalism. More specifically, the issue which will be addressed is that of the class character of law. This issue requires some clarification.

As we saw in Chapter Four, the main purpose of the capitalist state is to secure a certain set of relations - the capital relation. It follows, therefore, that the primary purpose of law, as a part of the state structure, is to also maintain and reproduce those same relations. Moreover, since the capital relation is inherently unequal, then the law itself will also be unequal. Yet, as Picciotto notes:

> It is characteristic above all of law and the legal system, probably more than of any other social institution or part of the state apparatus, that it appears to be essentially neutral, an empty vessel that can be filled with whatever content society chooses (Picciotto, 1979:166).

In other words, there is a seeming paradox here, for if capitalist law is, by necessity, a class-based law, then why does it have the appearance of "neutrality"? The crux of the issue, therefore, is this: how are we to account for the class character of law in a capitalist society?

Within Marxism, there is one stream of thought which explains this paradox by arguing that the content of law amounts to an "ideological mask" or a "mystification" of class interests. According to this explanation, law is merely an 'instrument' or 'tool' to be used by the dominant class in its struggle with the subordinate class(es), and any rights which the law enshrines can be readily dismissed as being "empty" rights, with no real import or validity. While it would seem a facile task to adopt such an explanation and hence end the analysis here, such cannot be the case. For the above approach is an overly simplistic and misleading one. This is so for at least two reasons. For one, it ignores the fact that the rights upheld by law were hard-fought ones, the results of progressive struggles by the subordinate class(es).[1] For another, it does not take into account the fact that the law reflects a diversity of interests and ideologies (although not equally) and not just those of the dominant class. As Sumner states:

> Ideologies arise out of economic, political and cultural practices and thus not only reflect class relations but also the technical divisions encapsulated within class relations. Law does not, therefore, just contain bourgeois economic ideology. It also reflects the ideologies of fractions of the bourgeoisie and the ideologies

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[1] For example, the legal limitation on the length of the working day, the right to strike, the right to form a union and so on.

> of other classes - through the political activities of these classes and class fractions (Sumner, 1979: 269).

In short, to adhere to such an "instrumentalist" view of law would be to confuse the Hegelian distinction between 'essence' and 'appearance'. That is, while the law may, in its 'essence', promote substantive inequality, its 'appearance' is that of formal equality. But that 'appearance' is not simply an 'illusion'. The law and the rights it upholds do have an objective social reality. Consequently, an approach which simply dismisses the law as a "mask" or "mystification" will not only be unable to uncover its 'essence', but will also fail to appreciate the role played by law in the broader social formation.

Given the failings of the "instrumentalist" approach, an understanding of the class character of law must be sought elsewhere. The approach which will be explored below is one which locates the 'essense' of law in its form. Such an analysis offers the potential for overcoming the limitations of the "instrumentalist" approach, for, as Arthur suggests:

> A materialist account of the specific character of the legal form is required which does not dismiss the purely legal concepts as 'ideological phantasms', but explicates them theoretically in terms of their reality and historical significance (Arthur, 1976:32).

A. Legal From Under Capitalism

In terms of an analysis of the form of law, one writer who stands out in the literature is the Soviet legal theorist, Evgeny Pashukanis. In his major theoretical work, The General Theory of Law and Marxism,[2] Pashukanis expounded on what has come to be known as the "commodity form theory of law."[3] Pashukanis himself regarded this work as only an introduction to the problem of constructing a Marxist theory of law and by no means a definitive statement.[4] Nevertheless, since it is the form of law which we are interested in determining here, it is worth considering his analysis in some detail, especially since one of Pashukanis' main concerns was to rebut the view that law is an 'instrument' manipulated by dominant social classes.[5]

The view of law as an 'instrument' is one which Pashukanis attributes to his contemporary, Stuchka. Stuchka defined the nature of law as ". . . a system of relations which corresponds to the interests of the ruling class and protects it with organized force" (p. 61). From Pashukanis' point of view, Stuchka was correct in identifying the problem of law as a problem of social relationships, for it raises the question: how does law regulate social relationships? But rather than seeing law as a specific social relationship, Stuchka figured law as with all social relationships in general, with the result that law as a social relationship became indistinguishable from social relationships in general. Stuchka's answer to the question, then, was a tautological one, that is, social relationships somehow regulated themselves.

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[2] There are three English translations of this work: in Lenin et al. (1951, translated by H. W. Babb) pp. 111-225: C. Arthur (ed.) (1978), translated by B. Einhorn); and P. Beirne and R. Sharlet (eds) (1980, translated by P. B. Maggs). It is the third translation which is used here.

[3] See also: Bablus (1978). Interestingly, Balbus formulated his theory prior to becoming aware of Pashukanis' work. See: Balbus, 1978:88fn.

[4] It should be noted that Pashukanis' theory was actually aimed at an explicitly political end - the speeding up of the revolution designed to end property relations. In this respect, Pashukanis posited the 'withering away' of both the bourgeois state and the bourgeois form of law. While this is a significant element in his theorizing - and not without its flaws - it will not be dealt with here.

[5] Pashukanis was also intent on critiquing three main trends in jurisprudence: social functionalism (Renner), psychologism (Reisner) and legal positivism (Kelsen).

Pashukanis finds his way around this tautology by asserting, first, that not all social relationships are legal relationships, that is, law could be "a mystified form of some specific social relationship" (p. 58). And, second, that not all regulation is legal in nature. Here Pashukanis distinguishes between legal regulation and technical regulation. Whereas technical regulation serves the universal interest and is based on "unity of purpose" (for example, the technical norms of railway movement, the series of rules for the curing of a sick person by medical personnel), legal regulation serves a particular interest and is characterized by "controversy."

In sum, while Stuchka's definition of the nature of law revealed the class content of the legal form, it did not explain why the content develops such a form. It was not enough, therefore, to focus solely on the content of law. According to Pashukanis, a Marxist theory of law had to be able to explain the particular form which law takes in a definite historical period. And the key to this problem, for him, was to perceive law as a "unique" social relationship and a specific type of regulation: "the regulation of social relationships assumes a legal nature correlative with the development of the specific and basic legal relationship" (p. 59).

The essence of Pashukanis' argument is that law as a unique social relationship must be understood in the same sense that Marx termed capital a social relationship. To elaborate, according to Marx's method, his theory of the development of capitalist society began - not with production in general - but with specific elements of production (commodity form and value) as they related to a historically situated set of social relations. For Marx held that economic production could only be understood in terms of a set of categories which pertained to a specific form of production. Similarly, Pashukanis begins - not with law in general - but with specific juridical categories (legal norm and legal subject) which reflect definite social relations.

To proceed in this fashion, Pashukanis, through a critique of bourgeois jurisprudence, traces the basic legal relationship back to private law, since

> It is here that the legal subject, "persona," finds a fully adequate embodiment in the concrete individuality of the subject engaged in egoistic economic activity, as an owner and bearer of private interests. It is in the private law that legal thought moves most freely and confidently; its constructs assume the most finished and structured form (p. 59).

Hence, Pashukanis' basic prerequisite for legal regulation is the conflict of private interests. It is, simultaneously, "the logical premise of the legal form and the real cause of the development of the legal superstructure. The conduct of people may be regulated by the most complex rules but the legal element in this regulation begins where the individualization and oppostion of interests begins" (p. 60).

Pashukanis' overriding concern here is to link the legal relation with a specific economic one. For him, law is inseparably linked with private property and the production for exchange such that "the unique social relationship whose inevitable expression is the form of law" is to be found in "the relationship of the possessors of commodities" (p. 61). In other words, the key to the form of law is commodity production. Moreover, Pashukanis suggests that Marx himself provides the clue to the legal form in his analysis of commodity exchange.

For Marx, "(c)apitalist society is above all a society of commodity owners" (p. 74). Social products take the form of commodities to be exchanged in the market.[6] But in order for this exchange to take place, qualitatively distinct commodities must enter into a formal relationship of equivalence. This is facilitated by the universal equivalent: money, and the value of the commodity exchanged is expressed in 'exchange-value'. As such, in the process of exchange in the marketplace, commodities relate to each other as 'values' which can be exchanged for other commodities "in a definite ratio." This quality "appears inherent in the objects themselves, by force of a type of natural law which acts behind people's back entirely independent of their will" (p. 75).

The commodity form, therefore, undergoes an abstraction - a 'masking' - by which the original content (use-value) is erased and is replaced by a universal equivalent (exchange-value). This Marx referred to as the "fetishism" of commodities. The formal equality that the commodity form postulates is only an "apparent" equality. Marx went on, however, to say that

> It is plain that commodities cannot go to market and make exchanges of their own account. We must, therefore, have recourse to their guardians, who are their owners. . . . In order that these objects may enter into relation with each other as commodities, their guardians must place themselves in rela-

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[6] See the discussion in Chapter Four above.

> tion to one another, as persons whose will resides in those objects, and must behave in such a way that each does not appropriate the commodity of the other, and part with his own, except by means of an act done by mutual consent. They must therefore, mutually recognize in each other the rights of private proprietors. This juridical relation, which thus expresses itself in a contract, whether such a contract be part of a developed legal system or not, is a relation between two wills, and is but the reflex of the real economic relation between the two. It is the economic relation that determines the subject-matter comprised in each such juridical act (Marx, Vol. I, 1977:88).

And it is this which Pashukanis was eager to underscore: at the same time that the product of labour is taking on the quality of the commodity form and becoming a "bearer of value," the individual acquires the quality of a "legal subject" and becomes a "bearer of legal right" (p. 76). The constant transfer of rights in the marketplace creates the 'appearance' of a "bearer of rights." While the individual was initially a qualitatively distinct concrete subject with specific needs and interests, through the constant transfer of rights s/he is transformed into an abstract, impersonal legal subject.

In essence, Pashukanis' argument is that legal relations become fetishized social relations in the same sense that commodities do. Just as the commodity form replaces qualitatively distinct products with the "universal economic equivalent" and presents them as having a 'life of their own', so too does the legal form replace qualitatively distinct human needs and values with the "juridic subject' and presents the 'appearance' that law, the "universal political equivalent," has a 'life of its own'. Hence, for Pashukanis, commodity fetishism is complemented by legal fetishism. The two processes occur simultaneously:

> . . . at a certain stage of development, the relationships between people in the process of production assume a doubly perplexing form. On the one hand, they appear as relations of objects - commodities, and on the other as will relationships of individuals independent and equal to one another - legal subjects. Along with the mystical quality of value something appears no less perplexing - a legal right. Simultaneously a single whole relationship assumes two abstract aspects - economic and legal (p. 79).

Moreover, this form of law is a particularly bourgeois one. It could only emerge once the commodity form was fully developed, which occurs, precisely, under capitalism. For, whereas the pre-capitalist legal subject was a concrete individual with specific customary privileges, the legal subject of capitalist society is a universal abstract bearer of all manner of claims. Only with the full development of bourgeois relationships is the "ability to be a subject of rights torn from the living concrete personality . . . Legal capacity is abstracted from the ability to have rights. The legal subject receives his alter ego in the form of representative while he himself assumes the significance of a mathematical point, a center in which the sum of rights is concentrated" (pp. 77-78).

In short, it is the state, through law, which reflects the impersonal, abstract and equivalent form of commodity exchange. The state, as "representative," is the "third party" that embodies the mutual guarantees which commodity owners give to each other:

> . . . neither of the two persons exchanging in the market may appear as an authoritative regulator of the exchange relationships; for this, some third person is required who embodies the mutual guarantee which the commodity owners as owners give to one another, and who is accordingly the personified rule of exchange between commodity owners (p. 100).

Hence, Pashukanis explains the form of law in terms of its parallel with the commodity form: the logic of legal concepts corresponds with the social relationships of commodity production. But while he offers us an analysis of law based on form, the question which emerges is: to what extent does Pashukanis reveal the real "essence" of law? In other words, to what extent is the class character of law made known by his analysis? When such a question is posed, the explanatory power of Pashukanis' theorizing appears limited. The basis for such an assertion needs to be examined in some detail, for such a discussion can prove of value in formulating a more cogent theoretical scheme.

To begin with, Pashukanis derives the form of law from the economic base. The very basis of the legal category is the notion of the 'bearer of rights', the juridical subject. This is seen, not as a different process from that involved in commodity fetishism, but part of the same process, that is, the process from the very beginning "assumed a dual nature - economic and legal" (p. 67). As a consequence, all law is seen as a reflection of commodity exchange. With regard to crime, for example, Pashukanis states:

> A crime may be considered as a particular aspect of exchange, in which the exchange (contractual relationship) is established post factum, that is, after the intentional act of one of the parties. The ratio between the crime and the punishment is reduced to an exchange ratio (p. 111).

Even the criminal law process, then, is perceived as a reflex of the exchange process. The implication here is that the law is actually part of the base of society. This poses a number of problems, the most important of which is that it ignores or at least downplays the repressive nature of law, that is, law in relation to class domination.[7]

This neglect of Pashukanis' part is at least partly due to his desire to refute the view, expressed in the instrumental forms of economism,[8] that the law is merely 'ideology' - an 'epiphenomenon'. He does this by asserting that ideological categories such as law, value and commodity express objective conditions. However, in doing so, Pashukanis is left with a view of law as a social relationship "wrapped up in mystery." But law, as with commodities, values and so on, is not 'illusory'. Such categories, although they may be 'appearances', express existing social relations with a certain validity.[9]

Consequently, by reducing law to social relations between subjects in commodity exchange, Pashukanis has neglected the significance of the political component of law, of law as an expression of ideology. As Sumner (1979:7) has argued, law is not just "an automatic reflex of current economic relations," it has a clear political function as well.

It may be that the identification of legal relations with economic ones found in Pashukanis (and in other Marxist writings) stems from an over-literal reading of the section of the 1859 Preface (c.f., Redhead, 1978) in which Marx wrote:

> At a certain stage of their development, the material productive forces of society come into conflict with existing relations of production, or - what is but a legal expression

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[7] Although Pashukanis does raise the question of the relationship between class domination and state domination. See the quote in Chapter Five above.

[8] See Beirne and Sharlet's Introduction, p. 5.

[9] See Chapter Five above, fn. #1.

> for the same thing - with the property relations within which they have been at work hitherto (Marx and Engels, 1959:43).

Yet, to accept that legal relations equate with or reflect economic relations of production is to ignore the complex nature of the relationship between capitalist relations of production and law. What needs to be determined, therefore, is how did Pashukanis end up in this position? For it would seem that his analysis has actually divorced the form of law from the content of its activities.

The answer lies in the fact that Pashukanis has derived the form of law from commodity exchange rather than from production relations. Stated differently, he has confined his analysis of the capitalist mode of production to its most general level - commodity production. While capitalism arises out of the generalization of commodity production, it is not to be identified with it. For what is peculiar to capitalist commodity production is that labour power itself becomes a commodity. In essence, Pashukanis has developed a theory of law for commodity-producing societies, but not for specifically bourgeois societies. As Binns has noted:

> The problem with Pashukanis . . . is that he is obsessed by the commodity form and by commodity fetishism. He never goes byond it in his development on the notion of law. This is a colossal impediment. It leaves him with an understanding of capitalist law that is at best embryonic, at worst static and erroneous (Binns, 1980:105).

When Pashukanis turns to Marx for his elaboration of the legal form, it is the first chapter of Volume One of Capital to which he refers. It is here where Marx outlines the process of simple commodity production. As will be recalled from our discussion in Chapter Four, simple commodity production is based on independent producers who own their own means of production and enter into a relationship of exchange in the market. The fetishism and competition of simple commodity production do not erase the real character of exchange, since what flows back in one form is more or less equal to what flowed out in another (recall: C-M-C).

It is in the sphere of circulation, in the competition between atomised private individuals, where Pashukanis grounds his analysis. But Marx did not stop here, as his explication of simple commodity production was only a preamble to his major purpose: to outline what was distinctive to capitalist commodity production and the laws of development unique to it. Indeed, Marx argued that it was necessary to "leave this noisy sphere, where everything takes place on the surface" and enter into "the hidden abode of production," for it is here that the "secret of profit making" resides. He goes on to say that:

> On leaving this sphere of simple circulation or of exchange of commodities . . . we think we can perceive a change in the physiognamy of our Dramatis personae. He, who before was the money-owner, now strides in front as a capitalist; the possessor of labour-power follows as his labourer. The one with an air of importance, smirking, intent on business, the other, timid and holding back, like one who is bringing his own hide to market and has nothing to expect but - a hiding (Marx, Vol. I, 1977:172).

Under capitalist commodity production, both the means of production and labour power are commodities. Both relations among owners and relations between owners and non-owners (capitalists and workers) are exchange relations. And (as was stressed in Chapter Four) while the former is compatible with simple commodity production, the latter is not.

Implicit in simple commodity production is the assumption that commodities are exchanged in quantities that are inversely proportional to the socially necessary labour time needed to produce them. Yet, this assumption no longer holds under capitalist commodity production, for the purpose of capitalist production is the expansion of values - the *maximization of profit* (recall: $M-C-M'$) - and this profit derives from the *appropriation of surplus value*. As such, the movement from simple to capitalist commodity production marks a transformation in the exchange relation, for in the capital-labour relation

> the exchange is illusory in that what flows back to the worker is not an equivalent in another form (money) of what he or she has put in in the form of labour; nor is it merely an 'unequal' exchange in that the labourer gets back less than he or she puts in. Rather, the content of the exchange is quite illusory, since what the worker gets back is only what he/she puts in in an earlier period (Fine, 1979:43).

Thus, as Marx himself was clear to emphasize, *capitalist* commodity production can only be fully understood when one goes beneath the 'surface' of the exchange relation and examines the level of production, since it is here where the exploitation of the worker occurs and hence the true nature of the production process is revealed.

Pashukanis has demonstrated that legal relations have an objective basis in relations of exchange. But in the relations of exchange under capitalist production, this objective basis takes on a particular quality. Admittedly, there *is* an objective basis for bourgeois legal rights and the 'freedom' and 'equality' that accompanies them. These are not 'false' or 'empty' rights but they are *limited* in that, in and of themselves, they cannot erase the class relation between capital and labour on which they are founded. No matter how 'equal' the exchange, nor how much it is guaranteed by law, the relationship remains an exploitative one.

In short, because Pashukanis remains at the level of exchange, he never raises the question of what this exchange creates: the production and realization of surplus value. For it is not only that "concrete individuals" appear as "juridical subjects" which figures in bourgeois legality, but the very substance of the exchange (appropriation without return). Thus, the class character of law only becomes fully apparent when its determination by relations of production is realized. As Fine suggests:

> To analyze the form of law, without relating it to its content within social relations of production, will allow us to see the commodity relation which it conceals within itself and beneath its idealization of the 'free subject'. But it will not allow us to discover the specifically class character of bourgeois legality. This is not hidden in the form itself; only in the inner connection between bourgeois legality and the relations of production founded on the expropriation of labour (Fine, 1979: 43).

More specifically, this inner connection between bourgeois legality and the social relations of production can be located in the separation of economic and political spheres under capitalism. As discussed in Chapter Five, because labour power, as a commodity, is also fetishized, the social relations of production do not appear as relations of 'power' and 'force'. In essence, at the same time that capitalist commodity production creates (and requires) the phenomenal form of the 'political citizen', thus disguising inherent inequalities of power, it also creates (and requires) the legal form of the 'juridical subject as a bearer of rights', a formal equality which obfuscates the substantive inequality.

When viewed in this light, it becomes clear that, while law has an economic base, it has a significant political component as well. For while law derives from and expresses the social relations of production, it does not do so in strictly economic terms. At the same time that it regulates exchanges, it must also mediate the antagonistic class relations which are at the core of the productive process. In other words,

> . . . law not only provides certain necessary conditions for the initial constitution of individual subjects able to engage in exchange and enter into contracts, but serves in turn as universal solvent mediating particular antagonisms thus securing the political and ideological cohesion of the social formation (Weitzer, 1980:144).

To summarize thus far, Pashukanis' "commodity form theory" locates the 'essence' of law in its form: the legal form is posited as homologous to the commodity form. The advantage of his formulation lies in the fact that it directs our attention to an examination of the economic foundation of the legal form. Yet, while law does derive from economic relations, and it does provide a framework for exchange, the problem with Pashukanis' analysis is that it does not go deep enough. As the preceding critique has attempted to demonstrate, law derives - not from the level of exchange - but from the level of production. Both commodity form and legal form under capitalism are rooted in the social relations of production. Only by recognizing this does the 'essence' of law ring clear. For it is at the level of production where exploitation occurs and thus the class-based nature of the system is revealed.[10]

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[10] It should be noted that Pashukanis, beginning in the late 1920s, undertook a major self-criticism of his general theory. The theoretical reconstruction which followed was one which emphasized the primacy of relations of production. However, given that Pashukanis

Moreover, because Pashukanis equates legal relations with exchange relations he ends up implying that law is part of the economic base, and the political component of law gets lost in his theorizing. But once the separation of economic and political spheres is incorporated into the analysis, the political component of law is brought to the fore. What this also means is that law must be conceptualized as part of the superstructure and not the base, as Pashukanis and others (c.f., Kinsey, 1978) would have us believe.

By placing the law firmly within the realm of the 'nation state', the nature of the problematic is altered. For the crucial element in the class character of law is no longer that it emerges "at the moment of controversy" or "a conflict of interest" (p. 67) in the process of exchange. Rather, the crucial element in the class character of law becomes the identification of all individuals/citizens with their state. In other words, while the 'essence' of law is rooted in the economic sphere, capitalist production requires the 'appearance' of formal equality before the law in the political sphere. And this, in turn, places certain demands on the actual form which law takes under capitalism. That demand is met, in large part, by the fact that law maintains an 'internal cohesion'. As Engels commented:

> In the modern state law must not only correspond to the general economic condition and be its expression, but must also be an internally coherent expression . . . And in order to achieve this the

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was under great pressure from the Communist Party, it is difficult to determine whether his recantations represented a genuine desire to reject some of his earlier formulations, or were more a product of 'political opportunism'. The extent of the "external pressures" on his work is evidenced by the fact that Pashukanis subsequently fell victim to the Stalinist purges in 1937.

> faithful reflection of economic conditions
> suffers increasingly (Engels, 1959:404).

What this means is that the legal form is shaped by the requirement that it not only seem to be just - but it must actually be just. As a body of rules and procedures, the law must apply logical criteria according to standards of 'equity' and 'universality'. Thompson makes this same point:

> The essential preconditions for the effectiveness of law . . . is that it shall display an independence from gross manipulation and shall seem to be just. It cannot seem to be so without upholding its own logic and criteria of equity; indeed, on occasion by actually being just (Thompson, 1975:263).

This requisite of the legal form is met by what is known as the 'rule of law'. Dicey explains the 'rule of law' as follows:

> When we speak of the 'rule of law' as a characteristic of our country we mean, not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm . . . With us every official, from the Prime Minister down to the Constable . . . is under the same responsibility for every act done without legal justification as any other citizen (Dicey in Hunt, 1976:184).

The 'rule of law', in other words, encompasses two broad claims. First, everyone is subject to the law - even the sovereign - since the law presents itself as something separate and distinct from the interests of particular groups or classes. Second, the law treats everyone the same; "equality of all before the law" and "blind justice" are the catchwords that accompany the 'rule of law'.

Hunt (1976) has outlined three interrelated background assumptions that underlie the 'rule of law'. The first is the assumption that law is an inevitable or natural feature of social life. Following this, law is equated with 'civilization' and its opposite - the absence of law - with a state of anarchy (similar to the Hobbesian 'war of all against all'). Consequently, the whole of society is presumed to have an interest in the existence of law and, hence, law becomes imbued with the character of 'universalism'. Second is the assumption of the inherent rationality of law. Norms codified into law are welcomed in that they bring an element of certainty and predictability to social life. As such, laws are desirable in and of themselves, without special regard to their content. The final assumption is that conformity to the law is 'natural', with the corollary being that non-conformity or deviance is 'unnatural'. "The very existence of a state is treated as a sufficient condition to make obedience to law obligatory for all citizens" (Hunt, 1976:185). Thus, if an individual fails to conform, the source of the deviance lies not within the structure but within the deviant _per se_. All of these assumptions culminate in a belief in the 'sanctity of law'. The 'rule of law' becomes a 'moral absolute', something which is 'God given' and not 'man made', since to obey the law is deemed good in its own right, beyond the goals that underlie each law. In essence, the 'rule of law' is the _embodiment of the separation of economic and political spheres under capitalism_. That law takes this particular form carries with it a number of consequences for the perpetuation of the capitalist system.

First, the successful operation of the 'rule of law' is a major source of legitimacy for the capitalist state as a whole, since the 'internal coherence' of law contributes to the doctrine of 'the separation of powers'. As Hunt (1976:178) explains: "(t)he essence of this view is that the character of the democratic state is defined as one in which there exists a separation between the major components of the state." Moreover, this doctrine serves as a powerful ideology of the state. Not only does the state appear 'separated' from the economy, but institutions and agencies which comprise it appear 'autonomous' from one another as well.

That the legal domain is 'connected with' but at the same time 'relatively independent' from other agencies within the state points to the dialectical nature of law. On the one hand, the relative independence of law can create stresses and contradictions within the state as a whole. For example,

> Decisions by courts do not always please the holders of state power. The protracted struggle between the courts and Nixon throughout the "Watergate affair" is perhaps the most important recent example of such a tension in operation, in which the conflict between court and state contributed in no small measure to the downfall of Nixon (Hunt, 1978:179).

On the other hand, the 'autonomization' of law enables it not only to aid in securing the social formation, but gives law greater freedom and legitimacy with which to do so.

The second consequence of the legal form relates to the class struggle under capitalism. The 'rule of law' emerged out of class conflict. In the transition from feudalism to capitalism, the nascent bourgeoisie utilized certain important legal precepts in their struggle against the feudal order (including the right to own and control property and the right to obtain equal justice). With the success of the bourgeois class, those legal precepts became institutionalized. But what was initially the prerogative of a select few was soon demanded by all. The pressures from the 'popular masses' increasingly necessitated that the formal liberties guaranteed by law be accorded to a wider number. The state, as such, was forced to grant these concessions in order to contain the threat which such pressures posed.[11]

Thus, what was once a legal struggle between the aristocracy and the rising bourgeoisie under early capitalism became a legal struggle between the bourgeoisie and the working class under capitalism. But while the 'rule of law' was a product of class conflict, it also serves as an important weapon for containing class conflict. As Weitzer states:

> . . . when the ruled are successful in challenging the law or asserting their formal rights, this does not necessarily contribute to the demystification of legal appearances. On the contrary, legal victories potentially contribute to the reproduction of the illusion that the legal system is governed by justice and equality, thus ideologically increasing submissiveness before the law (Weitzer, 1980:47).

In other words, by taking on the form of the 'rule of law', the legal system contributes to the maintenance of capitalism by defusing the class struggle.

To elaborate, since the law must operate according to the criteria of 'equity' and 'universality', members of the working class come to believe that they too have a legal right and hence a real opportunity of rising into the capitalist class. As Balbus notes:

> Where the rights of economic entrepreneurial activity are open to all, and are tied to the legal right of expressing economic grievances politically, it is indeed difficult to persuade aspiring workers and other poor that the system is fundamentally unjust (Balbus, 1973:6).

Additionally, because the law is presented as 'neutral', as something separate and distinct from the interests of particular groups and classes, individuals and groups other than those within the ruling class can have a say in the creation of law. Indeed, historically, various 'non-class actors'[12] have been able to mobilize sufficient support to have their reforms put into practice. Such "successes" have the effect of bolstering the belief that the legal system is responsive to all manner of groups and individuals, and not just to the wishes of the ruling class.

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[11] For a more detailed discussion see Tigar and Levy, 1977.

However, it should be noted that although the 'rule of law' allows for - even demands that - groups and individuals other than those within the ruling class have input into the legal process, that input is by no means unfettered. Humphries and Greenberg (1981:218), for example, have suggested that the success of reformers or - to use Becker's (1963) phrase, 'moral entrepreneurs' - can be at least partly accounted for by the fact that, since ". . . ideological and political work may ordinarily be too time-consuming to be undertaken by those directly involved in material production, it is often carried out by others . . ." Moreover, the impact of such endeavours, in the long run, will depend upon whether or not they pose a direct threat to capitalist class interests. In short, while 'moral entrepreneurs' do exist, their mere existence does not guarantee their success. Rather,

> The success of such entrepreneurial efforts hinges on the ability of the entrepreneur to frame conceptions of deviance and devise strategies of control that mesh with the subjective interests and world view of those with sufficient resources to carry through an initiative and overcome possible opposition (Humphries and Greenberg, 1981:218).

What needs to be acknowledged, therefore, is that the input into the legal process which 'moral entrepreneurs' and other such individuals and groups manage to acquire cannot automatically be taken as evidence of a "pluralistic" social order. More often than not, such inputs have the effect of buttressing rather than challenging the legitimacy of the law and hence of the system as a whole.

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[12] For example, occupational groups such as physicians, psychiatrists, lawyers and social workers.

In the main, a pivotal point of the 'rule of law' is the notion of "equality before the law." In capitalist society, this notion translates into a combination of formal legal equality and economic or structured inequality. A well-known phrase by Anatole France succinctly poses the ramifications of such a combination:

> The law in all its majestic impartiality forbids rich and poor alike to sleep under bridges, to beg in the streets and steal bread (France quoted in Hunt, 1976:184).

In other words, if law is indifferent to the distinction between rich and poor, then it follows that it will also tend to support and perpetuate that distinction, thus delimiting the law's potential for bringing about marked social changes.

Yet, a word of caution is merited here. For, although there is an obvious need to recognize the class character inherent in the 'rule of law', there is also a danger of taking the critique to the extreme and simply dismissing the law outright as a fraud. This is a tendency which bears most profoundly on consideration of the role of law as an agent in procuring the transformation of capitalist relations of production, and several Marxist writers have fallen subject to it. But as Sumner states:

> Some will argue that because the form of law, at any state of bourgeois social development, is essentially bourgeois, or at a minimum controlled by the bourgeois class bloc, political struggles for legal rights are always in the long run doomed to failure; and that any such established

> civil rights will always be undermined. Well, of course; but that does not at all negate the political and cultural value of such struggles and liberties, nor does it allow for the mundane fact that gained liberties have alleviated suffering for many individuals. To ignore this last point would be to adopt an eschatological and . . . quite un-Marxian view of the development of working class politics (Sumner, 1981:89).

Thus, while it seems evident that the law serves as an important mechanism for securing the social relations of capitalist society, it must also be admitted that not all of the consequences of the 'rule of law' are negative ones for the dominated class(es). As Thompson has argued, the law may be rhetoric, but it need not be "empty" rhetoric:

> The rhetoric and rules of a society are something a great deal more than sham. In the same moment they may modify in profound ways, the behaviour of the powerful, and mystify the powerless. They may disguise the true relations of power, but, at the same time, they may curb that power and check its intrusions (Thomspon, 1975:265).

In this respect, the 'rule of law' can function to place restraints on the use of state power. This is perhaps most evident when the attempt is made by individuals who hold state power to balance two often competing aims: the need to maintain order on the one hand and the need to maintain legitimacy on the other. In this case, the 'rule of law'

> sets definite constraints on the ability of political elites to dispose efficiently of collective violence, constraints which they can ignore only at the risk of endangering their long-run legitimacy and interest in minimizing revolutionary potential (Balbus, 1973:3).

Clearly, then, the tension imposed by a short-term interest in the maintenance of order as against a long-term interest in sustaining the legitimacy of the system can function as a decisive check on the exercise of state power.

To summarize, the legal form under capitalism finds its expression in the 'rule of law' and, by doing so, it maintains and reinforces the social relations of capitalism. While this occurs in a number of different ways, the most important is the law's role in mediating class antagonisms. Furthermore, from this discussion of the legal form, a number of points have become evident. For one, legal enactments are not simply 'unilateral declarations' of the ruling class; "law is not simply imposed upon people, but is also a product and object of, and provides an arena which circumscribes class (and other types of) struggle" (Weitzer, 1980:138). For another, while law is shaped by the structure of capitalism, social actors have a crucial role in the decision as to whether and how the law will be used to respond to 'problems' within that structure. As Sumner states:

> To a certain extent . . . the social system dictates to judges and legislators. Only to an extent though; what is vital is the recognition that problems only appear in a certain manner depending on the social structural context in which they exist and are only perceived through the ideological grids of the people observing them. Thus the system may require legislative action, but it does not dictate to legislators how they are to see the problem or how to deal with it (Sumner, 1979:268).

Now that the form of law has been clarified, we are in a position to move from the level of 'law in general' to a more detailed examination of the criminal law. While the various categories of law (family law, constitutional law, the law of torts and so on) share in common the particular legal form embodied in the 'rule of law', they differ in terms of the specific functions they perform in capitalist society. To center on the criminal law, therefore, is to shift the focus of attention from the form of law to the content of its activities. In this respect, our analysis of the criminal law can be framed by one central question: how does the criminal law function to maintain and reproduce capitalist social relations? Admittedly, posing the question in this manner implies a move away from the traditional focus on the 'criminal act' and toward the broader structures of social control under capitalism. Yet, such a change in emphasis offers the potential for a more historically-oriented analysis, one capable of accounting for:

> . . . the obvious but frequently neglected point that 'crime' is differently defined . . . at different periods; and (that) this reflects, not only changing attitudes amongst different sectors of the populations to crime, as well as the real historical changes in the social organization of criminal activity, but also the shifting application of the category itself . . . to different groups and activities . . . (Hall, et al., 1978:189).

What we need to determine, therefore, is how the criminal law figures in the overall operation of the capitalist state, and what factors and processes determine the kind of persons or behaviors which will come to the attention of the criminal justice system.

B. The Criminal Law

In the discussion in Chapter Four, the activities carried out by the state were organized under two general headings: accumulation and legitimation. In the course of that discussion, the point was made that the relationship between accumulation and legitimation is a dialectical one. Nearly every agency or institution within the state is involved (often simultaneously) in both activities. As will be seen presently the criminal law is no exception.

With regard to the accumulation activities of the state, legal rules generally maintain the material conditions for production by providing a stable, "neutral" framework within which profit-making can occur (the state as 'juridical organizer'). But criminal law specifically plays an important role in the accumulation process. It protects and reinforces the social relations of capitalism: "(t)he criminal sanction is the last defense of private property . . . " (Linebaugh, 1972:12).

Moreover, the criminal law was prominent in the actual shaping and development of the social relations of capitalism. Thompson (1975), for example, has shown, in his analysis of the 'Black Act', the utility of criminal law during the 18th century in the creation of wage labour.[13] So long as it was possible to use commons, forests, ponds and game preserves to gain a livelihood, peasants could avoid becoming wage-labourers. The enactment of the Black Act, however, made it a capital offense to poach, steal fruit from trees, take fish from ponds, gather wood from forests and the like. The criminal law thus became a means of separating the serfs from the means of production, leaving them no other means of livelihood than seeking a wage.

Similarly, Linebaugh has argued that the 18th century criminal sanction was

> an integral aspect of the organization and creation of a 'free', mobile labour force, of the formation of the home market, and of the transformation of the wage, that is crime was both the result and a part of the main tasks of 18th century capitalist development (Linebaugh, 1972:13).

Although the criminal law plays an important role with respect to accumulation, its role is even more pronounced in terms of legitimation. 'Legitimation', it will be recalled, refers to the efforts of the state in containing and channelling one of the greatest threats to the accumulation process and thus capitalism as a whole: class conflict. In short, the state plays a significant role in the construction and maintenance of hegemony.

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[13] See also: Chambliss (1964) for a similar analysis of the law of vagrancy.

Criminal law is part of the terrain on which hegemony is accomplished. While hegemony is the process whereby the domination of the capitalist class is continually being reproduced, this domination can take on different forms depending upon the agency of the superstructure through which it is worked. We need to determine, therefore, the particular form(s) which domination takes when it is mediated through the criminal law.

To begin with, the criminal law represents the social control arm of the state. Obviously, the use of force by the state will be most pronounced during a 'crisis of hegemony'. At such times, the emergency powers of the state (for example, the deployment of armed forces) will be set in motion to quell the perceived threat and restore order.[14] Nevertheless, under stable political conditions, coercion is signified by criminal laws and sanctions and, as such, is implemented regularly through the criminal justice system. As Hunt has commented:

> The legal system is able to call upon the organized power of the state. This repression operates both through specific institutions, which range from the courts themselves to the prison system, probation service, etc. In addition, it also operates with

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[14] An example would be the imposition of the War Measures Act by the Trudeau government during the October crisis of 1970.

> wide-ranging powers, sanctioned by law, but able to act with a very considerable degree of autonomy (Hunt, 1976:180).

In this sense, criminal law can be characterized as a form of coercive domination. Yet, while coercion is an obvious feature of the criminal law, it is also obvious that the exercise of hegemony depends, not solely on force, but on a combination of force and consent. As Gramsci (1971) himself asserted, the liberal democratic state is one in which consent is normally 'in the lead' operating behind the 'armour of coercion'. Thus, even the coercive side of the state must work through ideology. The criminal law, therefore, must also be seen as a form of ideological domination.

Hunt (1976:178) has defined ideological domination as "those processes which reaffirm the existing social order and thereby legitimize class domination." To say that criminal law is both coercive and ideological domination is to highlight a very unique and contradictory feature of it. As Sumner (1979:265) states, "(l)aw is not only ideology backed by instituted social power, it is also instituted social power articulated and reinforced by ideology." As an ideological form, the criminal law acts as a 'legitimizer' of particular social relations, that is, it presents those relations in a certain light. Yet, at one and the same time, it too must be 'legitimized', that is, the criminal law requires an ideological base, for without such a base, it is simply 'naked power'.

Hay's (1975) research on rural counties in 18th century England illustrates this point. Hay begins with the seeming paradox that while more and more laws were passed making property crimes a capital offence (from about 50 in 1688 to over 200 in 1820), the proportion of death sentences actually carried out declined. His analysis centers around the fact that

> (t)he criminal law was critically important in maintaining bonds of obedience and deference, in legitimizing the status quo, in constantly recreating the structure of authority which arose from property and in turn protected its interests (Hay, 1975:25).

Terror alone could not accomplish such an end. The criminal law, as a form of ideological domination, used "Justice, Majesty and Mercy" to cement authority relations and thus maintain the privilege of the propertied class. In short,

> . . . the law did not enforce uniform obedience, did not seek total control; indeed, it sacrificed punishment when necessary to preserve the belief in justice. The courts dealt in terror, pain and death, but also in moral ideals, control of arbitrary power, mercy for the weak. In doing so they made it possible to disguise much of the class interest in law (Hay, 1975:55).

That law serves as a "legitimizer" of capitalist social relations is perhaps most evident in terms of the kind of acts which it proscribes. For the purpose of analysis, these acts can be separated into four categories: 1. crimes against property; 2. crimes against the person; 3. crimes against the state; and 4. crimes against morality.[15]

Before proceeding, however, two points need to be clarified. First, in the discussion which follows the intention is not to suggest that capitalism is necessarily the only system where the kinds of assertions which will be made hold true. Nevertheless, since the aim is to outline a theory of law and crime under capitalism attention will obviously be focused on that particular societal formation. A second point, which is related to the first, has to do with the tendency, in discussions of this sort, to draw comparisons between capitalist and non-capitalist societies. Typically, such analyses take the form of pointing to the Soviet Union and the Eastern European countries as examples of non-capitalist societies, which are then compared to Western capitalist societies. But using Eastern Europe and the Soviet Union as contrasts to the Western capitalist countries poses a number of difficulties, the main one being that it is not clear that they do, in fact, represent another kind of system. Indeed, there is very extensive debate within Marxism on this very issue,[16] with several writers arguing that the Soviet Union and Eastern Europe are actually best described as 'state capitalist' formations. In this respect, if both Eastern Europe and the West are exploitative class systems, then one would expect to find marked similarities in terms of legal and other factors. Consequently, while the focus here is on capitalist societies, the analysis may hold some relevance for other variants of class society which are also confronted with the problem of trying to legitimate and maintain an exploitative system.

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[15] The Schwendingers (1981:67) have noted that criminal codes "refer to discrete acts of crime such as burglary, homicide, extortion, etc. The codes do not signify the common characteristics that cut across all crimes . . . " As such, any attempt to formulate a definition of crime based on common characteristics, or to categorize the various forms of criminal behavior, is to go beyond a mere description of what those codes contain. Thus, while the four categories listed above are not replicated from an actual criminal code, it is believed that they represent, in summary form, the wide diversity of behaviors governed by the criminal law.

With regard to 'crimes against property', the criminal law delineates both the lawful and unlawful means of appropriating property compatible with the capital accumulation process. Consequently, the potential exists for the unlawful appropriation of property by worker and capitalist alike to come under the purview of the criminal law. That is, in the long-term interests of the accumulation process, it may be necessary to sanction members of the capitalist class who are acting in regard to their own short-term interests. This has the benefit of advancing - not only accumulation per se - but the belief in the legitimacy of the system as a whole. For it bolsters the fundamental tenet of the 'rule of law': that all persons and classes are subject to the law. As Hall and his colleagues state:

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[16] See, for example: Sweezy and Bettelheim (1971); Singer (1981); and Harman (1974).

> A 'Law' which is 'above' party and class can and must, from time to time, impose its legal authority on sections of capital itself. It must enforce its universal legal norms and sanctions against 'illegal' capitalist transactions (Hall, et al., 1978:207).

Moreover, the protection of property afforded by the criminal law is instrumental in the creation of 'consensus'. For, if the law protects the property of all members of the society, then members of the working class will support the use of criminal sanctions, since workers - no less than capitalists - have an interest in holding on to their own belongings. Nevertheless, that a consensus with respect to property crimes exists stems, in large part, from the fact that the criminal law does not distinguish between fundamentally different forms of property,[17] that is:

> The bourgeois . . . conception of property involves no more than the relationship between a person (persona) and a tangible thing (res). The right to property (the Roman dominium) entails the right to use and consume things as one desires. But bourgeois

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[17] For example, see Goff and Reasons (1978:5-6) for a discussion of the similarities and differences between "corporate criminality" and professional thievery.

> law collapses fundamentally different kinds of property into an undifferentiated res - not distinguishing . . . between "property for use" (personal consumption) and "property for power" (control of the means of production) (Weitzer, 1980:144).

As such, workers and capitalist may be in agreement with respect to 'crimes against property' - but for very different reasons, given that the former possesses only 'property for use' where the latter possesses both 'property for use' and 'property for power'.

Similar to crimes against property, all members of society have an interest in ensuring their own security against personal injury and harm. 'Crimes against the person' offer such protection by prohibiting certain acts (murder, assault, etc.) and providing punishments for those who violate them (death, imprisonment, etc.). The criminalization of such behaviors not only contributes to the general level of consensus or agreement within the society, but fosters the 'order' and 'stability' necessary for the smooth functioning of the system as well.

Yet, it should be noted that only certain kinds of acts fall into the category of 'crimes against the person'. Reasons, Ross and Patterson (1981), for example, have noted that "violence" against individuals occurs regularly in the workplace of capitalist societies. This typically takes the form of unsafe or hazardous working conditions, exposure to carcinogenic substances and the like. The result has been loss of life and health for a substantial number of workers. Yet, while such incidents meet the requirements normally associated with a 'crime' (for example, an intentional failure to provide adequate safety equipment or the flagrant violation of safety regulations by owners to cut costs and increase profits), they are seldom defined as such by the criminal law.[18]

Thus, while the criminal law does provide a degree of protection to working class members by defining certain acts as 'socially injurious' or 'harmful', it does not tend to define other acts - which are potentially more serious - as 'criminal'. To do so would be to call into question the very relations of production on which the criminal law is founded. In other words, the criminal law - if it is to remain capitalist law - is constrained by the kinds of behaviors it can and cannot prohibit.

'Crimes against the state' (such as treason and sedition) offer a means of protection for the state itself. These offences represent - in its boldest form - the political nature of law. For they legally prohibit activities designed to challenge the legitimacy of the state and, hence, the system as a whole.

The criminal law actually provides a very effective means for dealing with political conflicts of both an overt and covert nature. As Hall and his colleagues (1978:189) have noted, ". . . there is something appealingly simple about the 'criminal label': it resolves ambiguities in public feeling . . . Crime issues are clear-cut; political conflicts are double-edged." Part of the reason why crime issues are 'clear-cut' is the manner in which they are disposed of.

To explain, the criminal law adheres to the principle of "blind justice"; it responds - not to the 'why' of an act - but whether or not the act was committed. The race, class or political persuasion of the offender is deemed irrelevant, as the prime criteria for judging cases is the empirical question of whether a formally proscribed act was committed. In short, the issue becomes a matter of "facts" and, in the process of resolving it, the case is both 'individualized' and 'depoliticized'.[19]

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[18] Reasons refers to such acts as "victims without crimes." Glasbeek and Rowland (1979), however, have outlined a number of provisions under the Canadian Criminal Code (such as criminal negligence, assault, conspiracy, common nuisance and murder) which, although not devised for the purpose, are potentially applicable to employer violations of workers' health and safety.

> Cases are tried only between legal parties with defined legal interests that conflict over narrowly drawn legal issues. Collective needs are denied. The specificity of the rights and the narrowness of the legal issues combine to preclude the introduction of broader, though relevant, social questions. This restriction effectively depoliticizes the case. For example, an unemployed black accused of theft is tried on whether or not he took the property of another; he cannot defend himself by demonstrating the structural relationships between his act, racism, and class, nor by arguing that property is theft (Grau, 1982:205-06).

Crime issues, then, transform race, class or political conflicts into "legal-factual conflicts." By criminalizing the behaviours associated with certain groups or classes within the society, the criminal law has the net advantage of removing conflicts from the political-economic realm and restricting them to the normative dimension. Direct challenges to the system are circumvented and, thus, its legitimacy remains intact.

The final category of acts proscribed by the criminal law is that which has been termed 'crimes against morality'. At first glance, this would seem to be a rather nebulous category, as it includes a variety of different acts (such as abortion, illicit sexual behavior and illicit drug use) whose only similarity is that they set a particular standard of morality. Indeed, some writers (c.f., Schur, 1967) have argued that these acts amount to "crimes without victims" and, as such, should be de-criminalized. Nevertheless, the fact that they have been criminalized serves to highlight two particular functions of the criminal law as a 'legitimizer' in capitalist society.

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[19] In the determination of the guilt of the accused, it should be noted that both the physical (actus reus) and mental (meas rea) elements must be present. In this respect the 'why' of an act is restricted to whether or not the intent to commit specific act was present. See: Parker, 1983.

An important component in establishing the hegemonic control of a dominant class is to gain the acceptance - indeed, the active consent - of the dominated to a 'common world view'. In other words, the dominated must be socialized to a particular standard of 'morality' and 'custom'. And the law plays an active part in this process. As Gramsci noted:

> If every State tends to create and maintain a certain type of civilisation and of citizen (and hence of collective life and of individual relations), and to eliminate certain customs and attitudes and to disseminate others, then the Law will be its instrument for this purpose (together with the school system, and other institutions and activities) (Gramsci, 1971:246).

In short, the criminal law functions as an educator in capitalist society by defining a certain way of life as legitimate. In the case of 'crimes against morality', for example, legal enactments against prostitution, gambling, drug and alcohol consumption - even truancy and loitering - have been implemented at various historical points in time. Such laws

> . . . serve to reinforce the underlying values of a capitalist society, instructing its members in the rewards to be gained by sobriety, individual responsibility, deferred gratificaiton, industriousness and the belief that the only true pleasures in life are to be gained from honest, productive labor (Hepburn, 1978:77).

In doing so, they ultimately promote and reinforce a standard of conduct which is in keeping with the demands of capitalist production.

Nonetheless, many 'crimes against morality' would seem to be very inconsequential to the maintenance of capitalist relations. One could argue, for example, that gambling, drug use or prostitution is even "beneficial" to the production process in that, by partaking in such "pastimes," labourers are able to escape momentarily from the harsh realities of the workplace. However, in addition to its 'educative' role, the criminal law can also serve an important *symbolic* function.

It should be remembered that hegemony is not an 'automatic' condition; the dominance of the capitalist class must continually be *reproduced*. As such, the maintenance of hegemony involves not only the dissemination of a particular conception of the world, it also involves

> . . . taking account of popular interests and demands, shifting position and *making compromises on secondary issues* to maintain support and alliances in an inherently unstable and fragile system of political relations (without, however, sacrificing essential interests) and organizing this support for the attainment of national goals which serve the fundamental long-term interests of the dominant class (Jessop, 1980:342: emphasis added).

In this respect, the criminalization of behaviors which - on the surface - may seem inconsequential for maintaining capitalist social relations may in fact serve as a 'symbolic gesture' directed toward certain groups in the society to win support (for example, capitalist class fractions, organized sectors of the working class or 'non-class actors').[20] By compromising on issues which are not inimical to the interests of the system as a whole, the criminal law can prove instrumental in winning the allegiance of particular groups and, hence, aid in sustaining the stability and legitimacy of that system.

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[20] See above page 133.

To summarize, the criminal law acts as a "legitimizer" of capitalist social relations by the very acts which it prohibits.

First, prohibiting 'crimes against property' means that both capitalist and worker will be penalized when they appropriate property in a manner which conflicts with the long-term interests of the accumulation process. And both will support the use of criminal sanctions to protect property, although the kinds of property which each possesses is of a fundamentally different nature.

Second, prohibiting 'crimes against persons' will again create a 'consensus' among dominant and dominated alike, since each has a common interest in security against violence from others. Yet, because criminal law is capitalist law, only certain kinds of violence or threats to the person will tend to be defined as criminal.

Third, 'crimes against the state' bring the political nature of the criminal law to the foreground, and the realization that the use of the criminal label is an effective means for dealing with political and class conflicts, since it confines those conflicts to the normative sphere.

Fourth, 'crimes against morality' point to the educative and symbolic functions of law in the maintenance of hegemony. That is, criminal law plays an active role in winning the consent of the dominated and securing support and alliances among various groups and fractions.

Discussing the various legitimation activities of the criminal law under these four separate categories has allowed for a more comprehensive understanding of the complex ways in which the criminal law acts as a "legitimizer." But it should be emphasized that the factors discussed for each category of offences are not confined to that category alone. Rather, they hold true for all four categories taken as a whole. For example, while the 'educative' role of the criminal law was discussed in the context of 'crimes against morality', it is clear that sanctioning other forms of behavior (such as murder or theft) will also serve the purpose of disseminating a particular 'definition of reality' and standard of conduct.

From our discussion, it is evident that the criminal law figures in the overall operation of the capitalist state in terms of both the accumulation and legitimation activities it carries out. With respect to accumulation, it was noted that the criminal law not only protects and reinforces property relations, but was also instrumental in the initial formation of social relations under capitalism. Moreover, the criminal law figures prominently with respect to legitimation, particularly in terms of the construction and maintenance of hegemony. It is a unique mechanism for that end, since the criminal law embodies two seemingly incongruous forms of domination: coercive and ideological. That coercion - the use or 'potential' use of force - is an important weapon for securing the dominance of a class in a society rife with class conflict is almost self-evident. But what has also become evident from our discussion is that coercive domination must be dealt with in such a way as to minimize the necessity for its use. For this reason, the criminal law deals not only in force, but in ideology as well, since the use of force must always be perceived as legitimate by the wider society. In sum, therefore, the criminal law must be viewed as a conjoint expression of power and ideology (c.f., Sumner, 1979). And it is this particular combination which gives the criminal law a uniqueness unmet by other sources of hegemonic control.

The discussion to this point has focused on how the content of the criminal law meshes with the general directive of the capitalist state. We have yet to discover, however, the factors and processes which determine what kind of persons or behaviors will come to the attention of the criminal justice system. In other words, while we have examined the function which particular criminal laws perform, we have not broached the subject of the conditions under which criminalization will take place. This brings us to the question of the origin of particular criminal laws. That is, why do particular laws emerge when they do? Whose interests do those laws serve? And against whom are they directed?

C. The Decision to Criminalize

Criminalization refers to ". . . the attachment of the criminal label, to the activities of groups which authorities deem it necessary to control" (Hall, *et al*., 1978:189). The criminal law, therefore, can be said to originate as a response to the specific problems which certain groups pose for the smooth operation of the system. Spitzer has referred to these groups as "problem populations":

> Problem populations tend to share a number of social characteristics, but the most important among these is the fact that their behavior, personal qualities and/or position threaten the social relations of production in capitalist societies (Spitzer, 1975:642).

Given the conflictual and contradictory nature of the capitalist system, "threats" to the system in the form of problem populations are unavoidable. But whether or not they will be dealt with by criminalization is historically contingent on a number of factors.

One set of factors concerns the problem population itself in terms of:

1. the level of threat: to what degree does the problem population pose a challenge to hegemony? The greater the threat, the more immediate will be the need to respond to it. A more serious threat, for example, is more likely to require the use of force to contain it, whereas a threat of a less serious nature may be effectively dealt with through ideological means. For example, criminalization may be used to de-politicize the conflict by defining the 'problem' as a normative one.
2. the size of the threat: that is, how well organized is the 'problem population'? A group with a broad base of popular support may require more co-optive than coercive measures to bring it into line with the system's requisites, whereas a group with a small or minimal base of popular support may be effectively controlled through the criminalization of its activities.
3. placement in the class structure; how indispensable is the 'problem population' to the production process? A group located in the industrial reserve army, for example, will pose a different 'problem' of control than a capitalist class fraction.

Another set of factors pertains to the character and role of the state:

1. available control strategies: the decision to criminalize will be affected by whether other resources - either within civil society (for example, church or family) or the state itself (for example, regulatory agencies or civil law) - are available to deal with the 'problem population'. The greater the inability of other resources to deal with the problem, the greater the likelihood that criminalization will be utilized.
2. state personnel: the decision to criminalize will also be determined by the perception of those in authority as to the severity of the problem and what is to be done about it.
3. external pressures on the state: pressures exerted on the state to take action on a 'problem population' will influence the decision to criminalize. This will be colored by the particular group or fraction from which the pressure is emanating and how the group or fraction perceives the problem.

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4. degree of state intervention: the more the state intervenes into the economic sphere and civil society, the more likely that 'problem populations' will be handled directly by the state and, hence, the greater the likelihood that criminalization will result.

A third set of factors relates to the nature and extent of class conflict in the society:

1. degree and forms of class mobilization: the more organized the working class and disorganized the capitalist class, the greater the problems of control for the state and thus the greater the likelihood that some form of control measures will be implemented.
2. divisions and alliances among classes and class fractions: divisions and alliances will not only determine the nature of the 'problem', but also the kind of response which will be used to deal with it.
3. level of class consciousness: the greater the level of class consciousness of the working class, the more intense will be the 'crisis of hegemony' and, hence, the need for the state to take action.

The final factor pertains to the stage in development of the capitalist system. As the accumulation process proceeds, the inherent crises and contradictions within it will deepen. Consequently, the more advanced the system is, the greater the frequency with which 'problem populations' will emerge and, hence, the more intense the need to respond to them.

Clearly, the main issue confronting the capitalist state is the class conflict imbedded in the productive process. The 'success' of the state in mediating class antagonisms can be gauged, in large measure, by the extent to which 'problems' are defined in other than class terms. Given the particular form and content of the criminal law in capitalist society, we can expect to find that it will be used at various points in time as such a 'problem-solving' mechanism. For example, criminalizing the activities of 'problem populations' may function to: define a problem in 'non-class' terms; deflect attention away from other and more serious problems within the system; or even justify the need for more state intervention and control. In effect, a 'problem population' may provide a 'scapegoat' for the deeper, more structural problems within the system.

Admittedly, the above discussion has been geared at a rather high level of abstraction. But this has been necessary in order to adequately explain the many and varied factors which impinge upon the role of criminal law under capitalism. A more concrete analysis of criminal law could only be made possible by an indepth investigation of a particular law in a definite historical period. Indeed, such an investigation would not only have the advantage of testing the explanatory power of the theoretical scheme offered here, but could also shed light on the circumstances surrounding the origins of a criminal law and the consequences which resulted.

In the chapters to follow, therefore, such an investigation will be carried out. The subject which has been chosen for the analysis is the origins of Canada's first drug legislation. In the next chapter, the specific nature of the drug laws will be outlined alongside an examination of the only explanatory scheme to date which has been offered in the literature to account for their emergence.

Chapter Seven

The Origins of Canadian Narcotics Legislation

Prior to 1908 in Canada, no legal restrictions were imposed on either the sale or consumption of opiates, whether for medicinal or pleasurable purposes. The importation of opium was subject to a standard duty for drugs, and manufacturers had to pay a licensing fee. A variety of tonics, elixirs and cough syrups were freely-prescribed by doctors and dispensed by druggists across the country at low-cost to the consumer. In addition, prepared smoking-opium was manufactured and sold by Chinese opium merchants on the West Coast. Beginning in 1908, however, this state of affairs was altered quite drastically, for it was in that year that the Canadian Parliament began passing legislation to criminalize the use of opiates. The task at hand, therefore, is to explain the factors and conditions which led to the decision to criminalize drug use in Canada.

The origins of Canadian drug legislation is a subject which has received a considerable amount of attention within the literature.[1] Yet, the bulk of this research has been predominantly descriptive in nature. While certain features are usually presented to account for why the legislation emerged, the theoretical orientation of the authors always remains implicit. One notable exception however, is the work of Cook (1969; see also Small, 1978). Cook engages a 'conflict model' for her analysis which relies heavily on the premises of the labelling perspective. In this respect, Cook's work is compatible with the efforts of various labelling theorists to explain the emergence of the American drug laws.[2] Nevertheless, upon closer examination of the empirical setting, certain anomalies emerge which serve to weaken the explanatory power of Cook's analysis. Such a state of affairs would therefore seem to suggest that a different theoretical scheme for interpreting the emergence of Canadian drug legislation is needed.

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[1] See: for example, Solomon and Madison (1976-77); Green (1979); Trasov (1961); and Chapman (n.d.).

Consequently, the application of the Marxian theory of law and crime to the origins of Canada's drug laws would appear to be a worthwhile endeavor. Indeed, given the prominence of the labelling perspective in analyses of drug legislation, the issue of the drug laws provides a rather appropriate case for testing the explanatory power of the Marxist approach. For by critically examining Cook's labelling analysis and then offering a Marxist analysis of the origins of the drug legislation, it will be possible to demonstrate the competing explantory power of the two theoretical schemes. In this manner, the potential which the Marxist approach offers to an understanding of the crime phenomena can be readily illustrated. Accordingly, the discussion which follows will be organized in five sections:

First, the events surrounding the passage of the first drug laws and the content of the legislation will be described.

Second, the explanation put forward by Cook as to why the drug legislation emerged will be outlined.

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[2] See, for example: Becker (1963); Schur (1963); Lindesmith (1965); Duster (1970); Dickson (1973); Bean (1974); and Reasons (1974 and 1975).

Third, the explanatory power of Cook's analysis will be scrutinized, particularly in terms of certain anomalies or inconsistencies which are generated by her analysis.

Fourth, it will be argued that the shortcomings of Cook's explanation stem, in large part, from theoretical inadequacies inherent in the labelling perspective which she utilizes in her work.

Finally, in light of the critique of Cook's analysis, and the unanswered questions which that critique raises, the discussion will outline, in a preliminary fashion, how a Marxian theory of law and crime would address the issue of the origins of Canada's drug laws.

A. The Criminalization of Drug Use in Canada

The first criminal prohibition of drugs in Canada was passed in 1908. The standard or accepted description of the events immediately preceding the passage of the legislation runs as follows (c.f., Trasov, 1961; Solomon and Madison, 1976-77; Cook, 1969);

In September of 1907, an anti-Asiatic riot took place in Vancouver. In response, the government sent William Lyon Mackenzie King, who was at that time Deputy Minister of Labour, to investigate the incident and provide reparation to Asiatics who had suffered losses. In the course of his investigation, King was "somewhat surprised" to receive claims of $600 each from two Chinese opium merchants for six days loss of business as a result of the rioting. Upon further investigation, King discovered that prepared smoking-opium was being manufactured in Victoria and New Westminster as well as Vancouver, and that it was sold not only to Chinese, but to other Orientals and Whites as well. In his report of the losses sustained by the Chinese, King concluded that there was a need to prohibit the importation of crude opium and its manufacture in Canada "save in so far as may be necessary for medicinal purposes."[3] Further to this, King submitted a report to the government in July of 1908 entitled "The Need for the Suppression of the Opium Traffic in Canada"[4] in which he outlined in greater detail the incidence of opium use in British Columbia and the legislation which other countries had enacted to control the opium trade.[5] Less than three weeks later, Canada's first criminal prohibition of a drug was put into effect.

The Opium Act of 1908 (7-8 Edw VII c50) prohibited "the importation, manufacture and sale of opium for other than medicinal purposes" and made it an indictable offense to import, manufacture, sell, offer for sale, or have in possession for sale, opium. The act only referred to opium. Smoking of opium was not made an offense, nor was simple possession of the drug. However, in 1911, a more stringent act, The Opium and Drug Act (1-2 Geo V c 17) was introduced by King, who was then Minister of Labour, and passed through Parliament. The Opium and Drug Act essentially broadened the scope of the existing legislation along three lines.

First, the criminal sanction was expanded. Cocaine, morphine and eucaine were added to the schedule of prohibited substances and the Governor in Council was given the authority to add "any alkaloids, derivatives and preparations of the drugs named in said schedule, the addition of which is deemed necessary in the public interest." In addition, under Section 4 of the Act, smoking opium, having possession of opium for the purpose of smoking it, or being present in an opium "resort" were all made summary offenses.

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[3] Canada, Sessional Papers (1970-1908) No. 74f "Report of W. L. Mackenzie King on Losses Sustained by the Chinese Population of Vancouver, B.C." pp. 15-16.

[4] Canada, Sessional Papers (1908) No. 36b.

[5] For example, in 1906 China issued an edict which aimed at the total suppression within ten years of opium growth and consumption in that country.

Second, controls on the legitimate trade and dispensing of drugs were introduced. Wholesale dealing in scheduled drugs to other than authorized physicians, dentists, veterinary surgeons or druggists, selling drugs without prescription, failing to maintain records of all ~~such~~ transactions or refusing to allow those records "to be examined by any police officer" and prescribing the scheduled drugs for other than medicinal purposes were all made summary conviction crimes.

Third, police powers were expanded and civil liberties were reduced. On the one hand, any magistrate could grant a search warrant if "there is reasonable cause to suspect that any drug is kept or concealed for any purpose contrary to this Act in any dwelling-house, store, shop, warehouse, outhouse, garden, yard, vessel or other place." On the other, the burden of proof that drugs were being used for scientific or medicinal purposes was on the person charged.

No changes were made in the drug laws until the 1920s. Between 1920 and 1929, eight separate sets of changes were made to the drug legislation,[6] culminating in the Opium and Narcotic Drug Act of 1929.[7] The tenor of these changes is generally in keeping with the punitive nature of the 1911 Act, for they cemented the trend begun by the Opium and Drug Act by further broadening the criminal sanction, imposing stricter controls, widening the powers of enforcement and restricting civil liberties. To illustrate, under the amending Act of 1922 (12-13 Geo V c 36) an alien convicted of manufacturing, importing, exporting, selling or distributing drugs illegally could be deported upon the termination of his imprisonment "unless the court before whom he was tried shall otherwise order." In addition, persons convicted of distributing drugs to minors could "at the discretion of the judge be liable to whipping." And Section 7 of the Act introduced the "drastic right of search" whereby

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[6] See: Canada Statutes, 1919 (2 Sess), C.25; 1920, C.31; 1921, C.42; 1922, C.36; 1923, C.22 C.5.; 1925, C.20; 1926, C.12; and 1929, C.49 C.5.

[7] The Opium and Narcotic Drug Act of 1929 stands as the substantive legislation model for narcotics control in Canada (c.f., Solomon and Madison, 1976-77; Green, 1979).

> any constable or peace officer who had reasonable cause to suspect that any drug is kept or concealed for any purpose contrary to this Act, in any store, shop, warehouse, outhouse, garden, yard, vessel, or other piece, may search by day or night any place for such drug (12-13 Geo V c 36).[8]

Other amendments to the legislation included: no appeals for convicted offenders, the addition of heroin, morphine and cannabis to the list of scheduled drugs, and the authorization of writs of assistance to the RCMP for enforcing the law.[9]

Clearly, the decision to criminalize drug use in the early 1900s poses an interesting subject for inquiry, especially since it opened the way for a number of repressive amendments in the 1920s.

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[8] A search warrant was still necessary to search a "dwelling-house."

[9] A writ of assistance was individually issued to each officer and was valid as long as he remained in drug work. Under the writ, the officer could, on reasonable belief, enter and search any dwelling house for drugs. He was empowered to break open any door, window or other article he deemed necessary in his search, and could also search any person he found in the dwelling house (c.f., Solomon and Madison, 1976-77; Green, 1979).

In this respect, an analysis of the early years of Canadian narcotics legislation will have to consider not only why the laws emerged when they did but as well, the punitive tenor of that legislation. Indeed, it is these kinds of issues which are addressed by Cook. Given that the events surrounding the passage of the first drug laws and the content of the legislation have been outlined, we are now in a position to examine the analysis which Cook offers.

B. Cook's Analysis of the Drug Legislation[10]

Cook's analysis of the origin and development of Canada's drug laws is framed by the following question: What factors in the Canadian social structure influenced the content of the legislation? The answer we are given revolves around three relevant properties.

The first is what Cook refers to as "the existing stratification order." Following Becker (1963), Cook makes the point that "laws, as well as other normative rules, reflect differentials in power," such that those who make and enforce rules - the superordinates - are individuals possessed of greater status than those whose behavior violates the rules - the subordinates. At the time the first legislation was proposed, there were a number of groups in the Canadian population who could have been made targets of the law. Cook notes, for example, that

> The medical profession was probably responsible for as much opiate addiction as the Chinese opium pedlars when the issue was first discussed at length in Parliament in 1911. It could have been argued that in order to protect society, the

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[10] It should be noted that Cook's analysis actually covers the legislation from 1908 to 1923. However, since the concern here is with the initial legislation, only those aspects of her analysis which have a bearing on the first two Acts will be examined.

> legislators should attack the widespread indiscriminate use of medications containing opiates by ordinary citizens (Cook, 1969:38-39).

Nevertheless, according to Cook's theoretical reasoning, the targets of the legislation were not high-status doctors, but the subordinate, low-status Chinese. While Parliament did pass the Patent and Proprietary Medicines Act in 1908 to deal with the indiscriminate use of medicines, the penalties for violation were far less severe than those provided by the Opium and Drug Act, and any medicine which had the formula on the label of the bottle was exempt from the Act. As such, "(t)he decision to label narcotic users as criminal reflected the prevailing stratification order."

The second property influencing the legislation concerns "the prevailing cultural attitudes and beliefs" of the time. Again, following the labelling tradition, Cook emphasizes the role which moral reformers played in determining the content of the legislation, since "(t)he unchallenged right of the moral reformers to provide 'definitions of the situations' meant that there was an uncritical acceptance of the 'dope fiend' image of the drug user" (Cook, 1969:40). One moral reformer in particular who is singled out by Cook is Mackenzie King.[11] Cook accredits King with the passage of both the Opium Act of 1908 and the Opium and Drug Act of 1911. While the 1908 Act is seen "as a result of Mr. Mackenzie King's private investigation and report on the use of opium in Vancouver" the 1911 Act, according to Cook, originated "largely as a result of King's personal moral fervour."

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[11] Cook also cites the role which Judge Emily Murphy, an Edmonton magistrate, played in providing a 'definition of the situation'. In 1920 MacLean's Magazine commissioned Murphy to write a series of articles on the drug trade. Murphy's articles contained sensationalistic accounts and vivid warnings of the dangers posed by opium, morphine and cocaine. These articles later became Part One of Murphy's book, The Black Candle, which stands as the first Canadian book on drug abuse.

The third and final property of Canadian society to influence the history of the drug legislation was the presence of "interracial conflict" between the "British type" in the population and the Chinese. Cook argues:

> Had the racial conflict between Whites and Asiatics been absent, the moral indignation against drug use and the energetic enforcement of the law might have waned gradually as it has in the case of tobacco and liquor. The agents responsible for the manufacture of tobacco and alcohol were high status citizens many of British ancestry, whose industries contributed much to the various governments in Canada. These people could not be vilified with the level of intensity directed against the Chinese (Cook, 1969:45).

In sum, then, Cook explains the origins of the drug laws with reference to three main variables: the subordinate status of the Chinese, the moral entrepreneurship of Mackenzie King, and the racial hostility toward Asiatics which prevailed in Canada in the early 1900s. Together these three variables are said to explain not only the decision in the early part of this century to criminalize drug users, but also the use of rather punitive laws with which to do so. For according to Cook:

> The political process in a different culture and social structure might have produced a less coercive and repressive law. In a different political and moral climate the law might not have been enforced so energetically (Cook, 1969:45).

Cook's analysis exemplifies, to a large degree, the kind of interpretation which derives from the labelling tradition within criminology. Yet, the question which must be raised is: how accurate is such an analysis? In other words, to what extent is a labelling analysis capable of offering an adequate explanation of the circumstances surrounding the origins of Canada's drug laws? In the next section, this question will be addressed by examining the validity of Cook's analysis.

C. A Critical Appraisal of Cook's Analysis

Cook's analysis has the benefit of highlighting the fact that the issue of opium use was intricately connected with the "Chinese question." For although there were a large number of Caucasians who were dependent on opium-based products which were being manufactured by Caucasian-owned pharmaceutical companies, it was the Chinese opium smoker and the Chinese opium factories that were singled out as in need of criminal sanction (c.f., Solomon and Madison, 1976-77:242; Green, 1979:43). Nevertheless, Cook's explanation fails to consider the connection between the drug laws and the "Chinese question" in any detail. This is exhibited most clearly in the absence of any sense of "historical process" in her analysis.

To elaborate, opposition to the Chinese in Canada began as early as the 1870s. Several writers (Ward, 1978; Munro, 1971; Saywell, 1951) have suggested that the immigration of Chinese into Canada commenced as a political issue in 1872. In that year, the B.C. legislature attempted to pass two resolutions aimed at restricting the Chinese population in Canada.[12] Similar attempts to pass such legislation continued on into the 1880s.[13] In 1884, a series of repressive acts aimed specifically at the Chinese population were passed by the B.C. legislature. One of these, "An Act to Regulate the Chinese Population in British Columbia," contained the following preamble:

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[12] One resolution provided for a $50 annual tax on all Chinese and the other aimed at the exclusion of all Chinese from employment on federal and provincial public works. See: Chapter Nine below.

[13] For example, in 1875 legislation was passed to disenfranchise the Chinese. In 1876, legislation to prohibit hiring Chinese in provincial public works was passed along with a resolution favoring legis-

> Whereas the incoming of Chinese to British Columbia largely exceeds that of any other class of immigrant, and the population so introduced are fast becoming superior in number to our own race; are not disposed to be governed by our laws; are dissimilar in habits and occupation from our own people; evade the payment of taxes justly due the Government; are governed by pestilential habits; are useless in instances of emergency; habitually desecrate grave yards by the removal of bodies therefrom; and generally the laws governing the whites are found to be inapplicable to Chinese, and such Chinese are inclined to habits subversive to the comfort and well being of the community . . . (cited in Munro, 1971:44).

In addition, the act included a provision "to prohibit the use of opium except for medicinal purposes" (Munro, 1971:44).

All of the 1884 legislation was subsequently disallowed by the Federal Government. As recompense, however, the government established a Royal Commission to investigate the "Chinese question" in British Columbia.[14] The bulk of the evidence presented before the Commission took a strong moralistic tone. And the most serious moral charge laid against the Chinese was their addiction to opium. As a result of the Commission's investigation, a federal Restriction Act was passed in 1885 which provided for a $50 head tax on all Chinese entering Canada (except for officials, merchants, and students). No

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lation to restrict Chinese immigration. And in 1878 a special quarterly tax on all Chinese over 12 was passed by the B.C. legislature, but was subsequently disallowed by the Supreme Court (c.f., Munro, 1971;Li, 1979).

[14] See: Canada, Sessional Papers (1885) No. 54A. "Report of the Royal Commission on Chinese Immigration" (hereafter Royal Commission (1885)).

recommendation, however, was made with respect to opium use. Reaction to the Commission's report by members of the B.C. legislature and the public at large was one of "unreserved dissent." As a result, attempts to further protest the "Chinese question" continued.[15]

What is significant here is that: first, racially-oriented tension was present in B.C. as early as the 1880s; second, much of the debate surrounding the "Chinese question" took a strong moralistic tone; and, third, a superordinate group in the B.C. population - members of the B.C. legislature - were attempting to define the Chinese and their opium habit as deviant. In short, the three properties which Cook cites to explain the emergence of the drug laws in the early 1900s were actually in existence several decades earlier. It would seem, therefore, that by failing to take into account the broader historical setting, Cook's analysis cannot explain why the drug legislation emerged in 1908 and not sooner.

That Cook is not attuned to the historical process is also reflected in her characterization of King as a 'moral reformer' and instigator of both the 1908 and 1911 Acts. With regard to the 1908 Act, for example, King actually received considerable impetus from members of the Chinese community. Previous to his arrival on the West Coast, the Chinese Anti-Opium League of British Columbia had been lobbying the government for some form of action to curb the use of opium. While in Vancouver, King received correspondence from Peter Hing, a leader of the League, dated May 29, 1908. Hing wrote in part:

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[15] For example, the B.C. legislature passed a Chinese Exclusion Act in 1885 - which the Federal Government again disallowed. And the Victoria City Council passed a resolution denouncing the federal Restriction Act (c.f., Munro, 1971).

> Opium is a social evil in this world . . . Anti-opium leagues are being formed among the Chinese in British Columbia, with the object of trying to check the use of opium voluntarily, but we desire to have the co-operation of the Canadian Government. Whilst you, being a Commissioner of the Laurier Government, are in the city investigating into Chinese affairs; we do hope that you would give some attention to this opium question (Canada, Sessional Papers (1908) No. 36b).

In response to Hing's letter, King stated:

> As a government official, I have no special authority to deal with this question in an official way, but as a citizen, I shall certainly deem it a privilege to look into the question while here, and will gladly do my part to obtain the co-operation of the public authorities here and elsewhere in the suppression of this evil (Canada, Sessional Papers (1908) No.36b).

During his private investigation of the situation in Vancouver, King met with members of the Chinese Anti-Opium League and also the attache to the Chinese Legation in England.

In a similar vein, Cook claims that the Opium and Drug Act of 1911 "originated largely as a result of King's personal moral fervour. Having acquired the reputation of a specialist in opium, he was chosen to be one of the five-man British delegation attending the Shanghai Opium Commission in 1909. By 1911, he had acquired additional stature as an opium specialist" (Cook, 1969:37).

To begin with, King was not eager to attend the Shanghai Commission. His supposed "moral fervour" was being overshadowed by career concerns, since King was greatly preoccupied with his desire to secure a seat in the House of Commons and eventually the position of Minister of Labour.[16] Nevertheless, although King himself was reluctant to attend, he did communicate to Laurier the importance of sending a Canadian representative to the conference. The reasons he cited were four-fold. One was the advantage in identifying Canada with such a "humanitarian work." Another was the opportunity for Canada to be represented on an equal footing with other nations, which would set a precedent for similar occasions "of possibly more serious import." The third was the potential which such a trip offered for securing trade agreements with China. And the fourth, which King considered to be the most important of all, was the opportunity to gain the information necessary to restrict the immigration of Chinese into Canada.[17] From this it would appear that "moral fervour" was not the prime motive in either King's or the government's interest in the opium issue.

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[16] See: Public Archives of Canada (hereafter P.A.C.), W.L.M. King Diaries MG26 J13 (1908) page G2201; and P.A.C. Laurier Papers, MG26G, vol. 545, pages 147988-90, King to Laurier, 19 November, 1908.

That other concerns took precedence over the opium issue is further reflected in King's correspondence to Laurier in the course of his mission to the Orient. In a communique from Colombo, Ceylon, King outlined the negotiations he had carried on with the authorities in India. The thrust of these negotiations concerned the "immigration problem" and the possibility of commercial trade with India. In passing, King noted to Laurier:

> You will hardly be interested in the opinions I have gathered on the opium question and its bearing on conditions in India, so I shall pass this over.[18]

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[17] P.A.C. W.L.M. King Diaries MG26 J13 "Mission to the Orient" (1908-1909) vol. 132, pages G221519-20.

[18] P.A.C. Laurier Papers MG26G page 151214, King to Laurier, 31 January, 1909.

Further to this, the argument can be made that the impetus for the more stringent 1911 Act came - not as much from King - as from the findings of a Royal Commission established in 1910.

The Royal Commission to Investigate Alleged Chinese Frauds and Opium Smuggling on the Pacific Coast was established to investigate charges that members of the Liberal Party in B.C. and corrupt customs officials were taking bribes from Chinese smugglers who were bringing immigrants, opium and other goods into the country illegally.[19] The Commission concluded, in part, that drastic changes were required in the 1908 Act and made a number of recommendations.[20] The bulk of these recommendations were employed in constructing the 1911 Act (c.f., Solomon and Madison, 1976:77; Green, 1979; Chapman, n.d.). Thus, although King was the one who introduced the Act in the House of Commons, the Royal Commission also played a significant role in bringing the legislation into being.

In the main, Cook's analysis can be faulted for its failure to investigate the "Chinese question," particularly in terms of the position which the Chinese occupied in the Canadian social structure. Several writers (c.f., Phillips, 1967; Saywell, 1951) have suggested that the "Chinese question" was inextricably linked to the economic and labour market development of British Columbia. Unions, political parties, coal mining and railroad interests all expressed deep concerns about the Chinese (with their labour and moral habits rarely distinguished) as early as the 1870s on through to the 1920s. The historical relationship between these organizations and events, and the degree to which they impinged upon the drug legislation, is essentially ignored in Cook's analysis.

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[19] See: Canada, Sessional Papers (1910-11) no. 207 "Report of the Royal Commission to Investigate Alleged Chinese Frauds and Opium Smoking on the Pacific Coast" (hereafter Royal Commission (1910-11)).

[20] Three specific recommendations were offered: first, opium smoking and the possession of opium for non-medical purposes should be made criminal offenses; second, the police powers of search and seizure should be expanded to combat the tactics used by Chinese opium users and dealers; and, third, compulsory imprisonment should accompany fines. See: Royal Commission (1910-11).

By citing these anomalies or inconsistencies, the intention is not to completely discredit the explanation which Cook offers as to the circumstances surrounding Canada's early drug laws. Rather, it is to suggest that her analysis offers, at best, a *partial* explanation of the events. Obviously, Mackenzie King did play a significant role in the passage of the legislation. And the prevailing anti-Asiatic sentiments would seem to provide some explanation for the punitive nature of the laws. But what the preceding discussion has attemtped to demonstrate is that Cook's analysis does not delve *deeply* enough into the events surrounding the legislation, with the result being that many questions are left unanswered. In the next section, it will be argued that the reasons for the apparent limitations in Cook's work stem, in large part, from theoretical inadequacies inherent in the labelling perspective which she has utilized to guide her analysis. For labelling theory fails to ask some very important questions of the data. This, it will be suggested, results predominantly from a failure to include relevant factors in the analysis, specifically, the role of social structure - that is, political, economic and class - variables.

D. The Labelling Perspective[21]

The labelling or interactionist perspective on deviance[22] gained popularity during the 1960s largely as a response to perceived inadequacies in the traditional approaches in criminology and the sociology of deviance. Observing that behavior is not automatically, naturally or inherently deviant, certain social analysts began to ask questions regarding the nature and origin of rules and laws which define the boundaries of conformist behavior. An oft-quoted passage from Becker aptly summarizes the thrust of the labelling perspective:

> Social groups create deviance by making the rules whose infractions constitute deviance, and by applying those rules to particular people and labelling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an "offender." The deviant is one to whom that label has been applied; deviant behavior is behavior that people so label (Becker, 1963:9).

Thus, the labelling perspective marked a shift away from a traditional focus on deviant behavior and deviant people and more towards an examination of rule making, rule enforcement and their consequences.[23]

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[21] It should be emphasized that this discussion is not intended to be an all-encompassing elaboration and critique of labelling theory. Rather, the aim is to highlight the major aspects of the labelling perspective which have a bearing on the analysis of the process of rule making and some of the difficulties or limitations encountered with those aspects.

[22] It is worthy of note that labelling theorists have often defended criticisms of their work by arguing that their analytical framework is not strictly a theory but more of a "sensitizing perspective" regarding only certain aspects of deviance (Goode, 1975:581; see also: Becker, 1974 and Lemert, 1976).

[23] See: Erikson (1962); Kitsuse (1962); Lofland (1969) and Lemert (1972) for various formulations of the overall problematic which the labelling perspective addresses.

At its most general level, labelling theory contends that rules (laws), their formulation and their enforcement are deduced from general moral values and are the result of 'enterprising acts' of a specific individual or organization (Becker, 1963:135). That is, some behavior which comes (more or less) to public attention must be deemed 'immoral' by some individual or group who takes it upon themselves to campaign for legislation which would define such behavior as deviant. It was this assertion which led Becker to use the now well-known phrase "moral-entrepreneur" to refer to such an individual and/or organization.

The moral crusade or campaign engaged by a moral entrepreneur typically focuses upon behaviors related to competing styles of life. Quite obviously, behavior which arouses a moral crusade must at least conflict with some other conception of the boundaries of moral action. According to Schur (1971:105-9) and Gusfield (1963:14-17), such moral crusades are also attempts by particular groups to solidify their dominance in a status hierarchy by having their 'morality' enshrined in legislation.[24] Most often, moral crusades are initiated by dominant groups who feel their status threatened by a subordinate status group (Schur, 1971:109).[25] As a result of the power of the dominant group, certain behaviors associated with a subordinate group - like particular kinds of drug use - became labelled as deviant, thus 'creating' a new category of deviant behavior (c.f., Becker, 1974:45-49).

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[24] Gusfield refers to such conflict as 'status politics'. For Gusfield, the campaign for temperance was a "political conflict over the allocation of prestige" (1969:17) in that sobriety would symbolize the status dominance of a rural, Protestant, middle-class in the late 19th and early 20th century America. Goode (1970) and Horowitz (1977) have used the concept of 'status politics' explicitly in their analyses of drug laws and drug use.

[25] Both Schur (1971) and Gusfield (1963) argue that such threats to status will occur as a result of social conflict and/or in a period of profound social change.

With regard to the origins of drug laws, the research agenda is rather straightforward. Becker, for instance, chose the passage of the Marijuana Tax Act of 1937 in the United States to demonstrate the utility of his theory. He states:

> . . . according to the theory outlined above, we should find in the history of this Act the story of an entrepreneur whose initiative and enterprise overcame public apathy and indifference and culminated in the passage of Federal legislation (Becker, 1963:135).

Becker goes on to argue that Harry Anslinger and the Federal Bureau of Narcotics "furnished most of the enterprise that produced the Marijuana Tax Act" (Becker, 1963:137), thus successfully labelling marijuana use as a new form of deviant behavior.[26] It is in a similar fashion that Cook identifies King as the moral entrepreneur responsible for the initial legislation regarding drug use in Canada.

It must be granted that labelling theory, and the research it has engendered, has added substantially to our understanding of the processes surrounding the construction of deviance. One of the major strengths of this perspective has been its transcendence of pathological accounts of deviant behavior. Instead, the social order itself is called into question as the focus of attention has shifted from those labelled as deviant to the 'labellers' themselves. Moreover, such a shift, in maintaining its resistance to the traditional distinctions between conforming and deviant behavior, holds the potential for a more complete understanding of the moral and normative dimension of social formation and transformation.

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[26] See also: Lindesmith (1965); Duster (1970); Dickson (1973), Bean (1974) and Reasons (1975) for similar interpretations of the origins of the American drug laws.

Nevertheless, despite these advantages, labelling theory does contain some elements which have served to severely limit its usefulness. What is perhaps the most major constraint of labelling theory emerges from the level of its analysis.

To elaborate, labelling adherents have tended to perceive deviance - not as a static entity - but as the outcome of a dynamic process of social interaction (c.f., Schur, 1971). In essence, the analysis has remained at the interpersonal or social psychological level which, as Thio (1973:7) notes, is not surprising, given the indebtedness of the labelling perspective to symbolic interactionism. But such concentration on "micro setting" relationships has had a number of consequences for the kind of causal relation deemed important by the labelling theorist. One such consequence is that it is the moral entrepreneur who is seen as the key to the legislation of morality.

Needless to say, attempts to locate one individual and/or organization as a causal lynch-pin have produced some significant empirical difficulties. Galliher and Walker (1977 and 1978), for example, concluded from their re-analysis of Becker's sources that Anslinger's efforts, although important in the passage of the Marijuana Tax Act, at best merely helped to trigger an inevitable outcome. Similarly, Cook herself, in a Postscript to a more recent publication of her article (see: Small, 1978), claimed upon closer examination to have discovered more moral entrepreneurs (besides King and Murphy) who were lobbying for opium control.

The tendency of labelling theory to reduce social action to face-to-face interaction (Davis, 1980:203-4) gives rise to even more serious problems. Admittedly, labelling theory poses the process of labelling behavior as deviant as a political question (c.f., Becker, 1963), but its individualistic bias allows for neither an incorporation of broader social structural variables into the analysis, nor a specification of the relationship between the political process, other structural variables and deviance.

First of all, the nature of the stratification system and inequalities of power are never fully examined. Rather, labelling theorists merely assert that the powerful force their rules on the less powerful: the old make rules for the young, men make rules for women, Anglo-Saxons make rules for racial minorities, and so on (Becker, 1963: 17). Consequently, the basis of political power is never specified, and often degenerates into the tautological claim that 'those who successfully complete a moral crusade are powerful'. In other words, one major potential of labelling theory - viewing the social order itself as problematic in the study of deviance - goes unrealized, since labelling theorists never really question the stratification system. As Schur (1971:70) admits in his defense of labelling analysis against Gouldner, labelists never intended to call the social order into question or to propose "broad . . . socioeconomic and political change . . . (but rather only) changes in the criminal law, in public attitudes . . . and in accepted ways of dealing with 'troublesome' people."

Second, given the inadequate conception of the foundations of political power and the adherence to an individualistic approach to deviance, it is not surprising that labelling theory also lacks a well-developed understanding of the political process. Labelling theorists have, variously, either said nothing in this regard, left such specification "to their colleagues in political science" (Schur, 1971:07), or have implied a liberal conceptualization of political pluralism. This latter option is depicted, for example, in Becker's statement that:

> Economic organizations, professional associations, trade unions, lobbyists, moral entrepreneurs, and legislators all interact to establish the conditions under which those who represent the state in enforcing laws, for example, interact with those alleged to have violated them (Becker, 1974:45).

As well, it is reflected in his old/young, male/female, Anglo-Saxon/racial minority serial dichotomies cited above. Although relatively unsophisticated descriptions and analyses of the polity, such examples contain many of the basic premises of liberal-pluralist political science.[27]

Without an explicit and well-developed understanding of power and the political process in society, labelling theorists tend to simply identify agents of the state - rule-making institutions by definition - as politically powerful moral entrepreneurs. With respect to Becker's analysis of the American drug legislation, for instance, Galliher and Walker ask:

> . . . what are the consequences of blaming government officials for the passage of restrictive drug laws? The answer is that the American political process and economic structure remain unquestioned with the problem being isolated to a few bad people. In the tradition of liberal muckraking journalism, it is either Joe McCarthy, J. Edgar Hoover or Richard Nixon who is seen as the source of the problem, rather than the underlying political or economic system (Galliher and Walker, 1978:31).

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[27] See: the discussion in Chapter Three above on the liberal view of the state.

In the same vein, to rest the "blame" for the origins of Canadian drug legislation on the shoulders of Mackenzie King (and his moral fervour) precludes any need to look further into the historical data. Consequently, the possibility that factors other than moral concerns may be involved - factors confronting the political state as a whole (and not just one of its agents) - is easily overlooked. For instance, while Cook notes that King was sent to Vancouver in response to the anti-Asiatic riots in 1907, she fails to ponder why it was that the government defined the riots as "labour unrest" and had thus sent the Deputy Minister of Labour to manage the problem.

Related to the individualism of labelling theory, therefore, is the corresponding tendency for the analysis to remain at the normative or moral level. Although analysis of the consciousness(es) within a particular social formation is necessary, studying morality in isolation leads to a neglect of its political and economic correlates. Harris (1974), for example, has argued quite forcefully that without an understanding of the material factors which condition culture and cultural change, culture, indeed, confronts us as "riddles." Morgan provides a clear statement of this shortcoming with respect to the labelling perspective:

> . . . when studying the development of moral crusades leading to legal sanctions, one must look beyond the normative level of analysis to other structural processes during that period. There is a close symbiotic relationship between normative, economic and political dimensions in any state system. One, therefore, cannot study crusades occurring on any one level without first examining the causal contributions of the others (Morgan, 1978:60).

Further to this, while labelling theory has included notions of conflict within its purview,[28] that conflict is typically conceptualized in purely moral or cultural terms. For, remaining at the normative level of analysis often leads to explanations based solely on race or ethnicity. This is quite evident in Cook's analysis. Her explanation regarding the differential treatment of the Chinese opium smoker, as compared to other groups in the society who were using opium, centers around the element of "culture conflict" between Chinese and Caucasians. No consideration is given to the class position of the Chinese or the possible class-based nature of the labelling process. In short, labelling theory fails to incorporate the possibility of class conflict into the analysis.

In summary, it would appear that the deficiencies in Cook's analysis, identified earlier, are to a large degree the inevitable outcome of a reliance upon the labelling perspective. While labelling theory has added valuable insight into the processes of creating deviance, it is limited, among other things, by its individualistic bias and the tendency to restrict the analysis to the normative terrain. Although it does enquire into the reasons behind the enactment of particular rules, labelling theory is historically short-sighted, since its tenets do not require the analyst to look any further than the circumstances surrounding the passage of laws. Hence, an insensitivity to the 'historical process' results.[29]

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[28] Schur (1971:149), for example, speaks of struggles over moral definitions. As well, Becker (1974:49) in his 'reconsideration' included the suggestion that moral crusades involve "imputations of deviance" which are "fought over."

[29] This factor has led some critics to classify labelling theory as "ahistorical." See: for example, Davis, 1980.

Given the deficiencies in Cook's explanation of the origins of Canadian drug legislation, it would seem apparent that a more powerful explanatory scheme is needed; one capable of overcoming the anomalies and inadequacies generated by the labelling perspective. Accordingly, in the final section of this Chapter, the approach which a Marxist perspective would take in addressing the issue of the drug legislation will be outlined in preparation for a more indepth analysis.

E. Toward a Marxist Analysis of the Drug Legislation

The preceding discussion has raised a number of issues and questions pertaining to the origins of Canadian drug legislation which are in need of further consideration. For one, it seems evident that the drug legislation is somehow connected with the "Chinese question." For another, while King seems to have played a significant role in the passage of the laws, whether he was the major impetus, or whether his "moral reformism" was the main motivating force behind the legislation are in doubt. Additionally, there is a need for a theoretically grounded explanation of why opium legislation emerged in 1908 rather than in the 1880s.

Further to this, from the critique of both Cook's analysis and the labelling perspective, a number of factors have emerged which would seem to have a bearing on the passage of the drug laws. One is the position of the Chinese in the Canadian social structure. That is, what is their class position? How do the Chinese figure with the economic and labour market developments in the late 19th and early 20th centuries? Another is the role which the Canadian state (and not just one of its agents) played in bringing about the drug legislation. And a third is how the drug legislation - as an element on the normative sphere - is linked with its political and economic correlates. That is, how does the drug legislation correspond with the political and economic developments occurring in Canada at the time?

What is suggested here is that the issues and questions surrounding the drug legislation will only be resolved once these three variables - the class position of the Chinese, the role of the Canadian state and the stage of development of capitalism in Canada - are incorporated into the analysis. Indeed, it is these very elements which a Marxist approach would consider, since the Marxist perspective directs the researcher's attention to the nature of class relations in a particular historical period and the significant and variable role of the state in maintaining and mediating those relations. Accordingly, a crucial element in the analysis would be how the "Chinese question" intersects with these elements.

In essence, the interpretation and explanation of the origins of Canada's drug laws from a Marxist perspective will require "two steps backwards." First, the drug laws must be situated within the larger issue of the "Chinese question." And, second, the "Chinese question" itself must be located within the economic, political and ideological dynamics of the rise of industrial capitalism as a system of production and capitalists as a dominant class in Canada. In the next Chapter, therefore, we will begin the process of formulating a Marxist explanation of the origins of Canadian drug legislation by placing the "Chinese question" within the context of the development of capitalism in Canada. Once that is accomplished, we will then be in a position to "step forward" as it were and apply the tenets of the Marxian theory of law and crime to the factors and conditions surrounding the drug laws.

Chapter Eight

The Rise of Industrial Capitalism in Canada

The basis for the emergence of industrial capitalism in Canada was laid in the mid nineteenth century. Much of the impetus for its development came from the construction of transportation facilities - railways and canals - which stimulated the growth of cities, the formation of a socialized labour force and the development of a domestic market; thus welding the country into an economic unit. By the 1870s the process was well underway:

> Purely extractive industry was overlaid with a secondary development involving an elaborate transportation system, a capitalistic agriculture, an extensive list of manufacturers that appear to have been efficient in their day, and a creditable finance structure (Pentland, 1950:457).

It was in the 1870s that large scale production began to take root in Canada. Between 1870 and 1890, investment in machines increased and more and larger factories emerged. In 1870, for example, there were approximately 38,000 manufacturing units in Canada. By 1890 their numbers had increased to 70,000. During the same period, the number of firms with a capital of $50,000 or more nearly doubled, thus increasing manufacturing output (Rinehart, 1975:31). By the 1920s the giant corporation had replaced the small scale enterprise as the central feature in the Canadian economy. Employment conditions had become increasingly bureaucratized. Manufacturing units which had numbered 70,000 in 1890, had reduced to 20,000 in 1920. And manufacturing investment reached a peak in 1929 which would not be surpassed until the 1950s (Lowe, 1979:22). In short, industrial capitalism had arrived.

Evidently, then, the late 1800s and early 1900s was a crucial period for the rise of industrial capitalism in Canada. Indeed, it is this time period on which the present Chapter will focus. In the discussion which follows, the aim will be to trace the major economic, social and political conditions of the period with a view to establishing how the "Chinese question" intersects with these elements. This will entail an elaboration of: the ascendancy of the capitalist class and the capitalist mode of production in Canada generally and British Columbia specifically; the role of the Chinese in the economic and labour market development of British Columbia; the response of the working class to the developments which transpired; and, finally, the role which the state played in the inauguration of industrial capitalism in Canada.

A. Capitalist Ascendancy and Workers' Control

Central to the rise of capitalism as a dominant mode of production is a series of struggles over control of the production process. For the supremacy of the capitalist class requires not only, for example, the ability to set wages but - more importantly - the 'flexibility' to organize and reorganize the work process in its own interests. Such organization and reorganization entails the regulation of the pace of work, the scheduling and assignment of tasks, the supply of new workers, the introduction of innovations into the work process (mechanical or otherwise) and so on (c.f., Kealey, 1976; Marglin, 1974).

During the initial phases of capitalist development in Canada, control over the production process by capitalists was by no means assured nor complete. The formation of privately-owned, profit-seeking corporations did not, in and of itself, signal a fully developed capitalist mode of production. In many ways, corporate owners did not fully command the process of production even though they had an upper hand through their control of access to markets (i.e., through controlling the exchange of commodities - from raw industrial resources to manufacture goods - produced under the auspices of the corporate firm). In other words, despite the privately-owned corporate firm, workers in many industries still maintained considerable domination over production, thus acting as barriers to expanded profit-making and capital accumulation.

Clement (1981), for example, notes that in the early stages of capitalist production, mine owners extracted ore by means of the tribute or tutwork (piecework) system in which the work was contracted by auctioning it to groups of miners who were in turn charged for their materials and paid according to the amount of ore they produced. Such an arrangement, in effect, was one which combined elements of both simple commodity production and capitalist commodity production. The workers essentially worked for themselves, yet they did not own their own means of production - since the capitalist owned both the mine and its products.

Similarly, Kealey (1976) has documented the control which craftsmen and artisans maintained over the work process. Up until the 1870s, for example, coopers assumed control of wages and hours worked and restricted production and the number of admissions to their craft.

Capitalist ascendancy, therefore, necessitated breaking the last vestiges of workers' control. In this context, there are three general developments which succinctly characterize the changes within the production process during the period of capitalist ascension. The first of these developments is the monopolization of Canadian industry.

There were two major merger waves during the period under consideration - one in the early 1890s and the other in the early 1900s - which resulted in an ever-increasing monopolization of Canadian industry. Between 1909 and 1913, for instance, 56 amalgamations absorbed 248 industrial companies. The total capitalization of 206 of those individual companies was approximately $167,000,000. This amount was increased with the amalgamation process such that the authorized capitalization (including bonds) of the 56 individual mergers was almost $457,000,000 (Myers, 1972:xxxii). Writing in 1914, Myers noted:

> Already it is estimated less than fifty men control $4,000,000,000. or more than one-third of Canada's material wealth as expressed in railways, banks, factories, mines, land and other properties and resources (Myers, 1972:xxxi).

This trend toward monopolization was clearly evident in British Columbia in the late nineteenth and early part of the twentieth centuries. The development of capitalist industries on the West Coast was primarily centered in the extracting and processing of natural resources - mining, timber and fishing. The year 1858 is usually singled out as a pivotal one for B.C. development, for it was in that year that the Fraser River gold rush began. The discovery of placer gold provided an initial, although weak, base for the B.C. economy. However, as the gold rush receded, a new export staple was being developed: fish.[1]

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[1] In 1870-71, mining accounted for 75% of the exports in B.C. In 1881 mining accounted for less than 60% of the exports, while fishing had increased tenfold. Meanwhile, the manufacturing sector had increased from 400 units in 1870-71 to 2,900 in 1891 (Robin, 1972:15).

By the 1880s, the placer gold era had been exhausted. But it was quickly replaced by a base metal mining industry, as silver, copper, lead, quartz and zinc were discovered in large quantities in the Interior.[2] Further to this, the completion of the CPR in 1886, the opening up of the Prairie market, the demands created by an expanding mining industry and the growth of urban centres all stimulated the development of the lumber industry.[3] Hence, by the turn of the century, industrial development was well underway in British Columbia.

The growth and expansion which transpired in the province was also accompanied by consolidations within each of the major industries. In mining, the Consolidated Mining and Smelting Company was created in 1906 from a fusion of the St. Eugene, War Eagle and Centre Star Mines at Rossland and from assets of the Consolidated Smelting Company formed at Trail in 1898. In 1909, the Sullivan mine at Kimberly coalesced with Cominco. Consolidations of mining with transportation interests also took place. As Robin states:

> Although there remained many independent mines, the largest were soon associated under single ownership with the means of transportation; the Canadian Pacific Railways and Consolidated Mining and Smelting Company and the Great Northern interest and the Fernie coal mines being the two major examples (Robin, 1972:19).

The Canadian Pacific Railway had the largest holdings in the timber industry. It owned, through subsidiaries, six million acres of timberland in the Interior, a holding greater than the government's crown reserved land. And in the fishing industry, by 1901 six large firms were producing 42 percent of the catch (Robin, 1972:20).

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[2] Indeed, British Columbia soon became known as the mining province, producing more copper, silver and gold than the rest of Canada. It also accounted for one-third of the national production of coke.

[3] In 1881, for example, there were 27 saw mills in the province. By 1911, there were 224. The revenue from the forest industry was 7 percent of the total government intake in 1901 and rose to 41 percent in 1908 (Robin, 1972:17-18).

Generally speaking, the impetus for monopolization derived from two major sources. For one, intense competition between capitalists tends to drive prices down. Hence, a desire to control the level of competition was a strong incentive toward capitalist conglomeration.[4] But an equally strong incentive to monopolize was the control over production inputs - especially labour - which monopolization accommodated. For the tendency toward monopoly does not result simply from competition between capitalists (the realm of exchange relations) but, as importantly, from the conflict between capital and labour (the realm of production relations). As Reid (1975) has demonstrated, for instance, the monopolization of B.C.'s salmon canning industry was motivated largely by a desire to control the cost of production inputs - mainly labour - rather than by cost reductions flowing from economies of scale or control of price competition.

Accompanying the process of monopolization, indeed, often enhanced by it, was a rationalization of the production process through mechanization and the introduction of 'scientific management'. The increasing use of machinery and the application of scientific management principles to the work process had the effect of not simply increasing the rate of productivity, but radically altering the organization of work and, hence, the control which workers exercized over the production process.

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[4] It should be noted that monopolization was not the sole technique used to control the level of competition. Bliss (1974), for example, has documented the various combines and price-fixing arrangements carried on by business during this period.

The introduction of modern machinery facilitated the co-ordination, supervision and disciplining of work habits. As Braverman (1974:195) has noted, machinery "offers to management the opportunity to do by wholly mechanical means that which it had previously attempted to do by organizational and disciplinary means." Despite the destructive impact which technology and mechanization had on the skilled crafts, many nineteenth century trades did manage to retain a hold, however tenuous, over work relationships, for example, by forcing employers to hire only skilled journeymen to run the machines (c.f., Heron and Palmer, 1980). Nevertheless, workers' control was quickly eroding by the early twentieth century, for complementing mechanization was the increasing use of scientific management techniques.

The central objective of 'scientific management' was to boost productivity. Its leading proponent, F. W. Taylor, argued that by applying scientific methods to the work process, the tendency of workers to work below their capacity could be overcome. That is, the same methods which had been used in the study of physical objects could be applied to the measurement analyses and control of human beings at work (c.f., Rinehart, 1975; Braverman, 1974). Accordingly, the techniques which were implemented included: 1. changes in task allocation: which sharpened the distinction between the conception and execution of work. Job planning came under the more direct control of managers and administrators; 2. job standardization and specialization: which served to simplify and compartmentalize tasks. Related to this was the use of foremen to oversee workers, time and motion studies to determine the quantity of workers' output and cost accountancy (for example, time clocks); and 3. new systems of wage payment:

whereby wages were tied to productivity through incentive or bonus systems.

Prior to the advent of scientific management, skilled industrial workers could exercise considerable discretion over the methods, standards and pace of their work. The complexity of their jobs and the ability to limit entry through apprenticeship systems ensured a relative degree of independence from management. However, by breaking craft work into discrete task units, and by making the distinction between 'mental' and 'manual' labour through changes in task allocation, scientific management increased the discipline, obedience and managerial control adherent to the labour process considerably.

The increasing rationalization of the production process through mechanization and the use of scientific management techniques allowed for a third major development: a general 'deskilling' of the labour force. Indeed, as Pentland has observed, ". . . it seems clear that 'unskilled' employments . . . expanded considerably faster than 'skilled' ones . . . in the first four decades of (this) century" (cited in Phillips, 1979:48). By substituting machine power for human labour, and by reducing the production process to its constituent parts, capitalists were continually able to employ more and more 'bucks' or 'greenhands' (c.f., Heron and Palmer, 1980; Kealey, 1976).

The utilization of unskilled labour can serve to not only reduce the wage bill and workers' control (through diminishing the dependence of production on the skills and knowledge of workers), it can also reproduce important divisions within the working class. In essence, a 'split labour market' may develop in which unskilled, cheaper labour is used: to create a new industry (having substantially lower labour costs than the rest of the labour market); as strikebreakers or replacements to undercut organized, skilled labour; or generally as a reserve labour pool (c.f., Bonacich, 1972). The introduction of cheaper labour into the labour market can therefore be perceived as threatening to higher paid, skilled labour, who fear their jobs and wages are being undermined. Very often, the supply of 'greenhands' was made up of recent immigrants to Canada, thus serving to split the labour force along ethnic or racial lines (c.f., Heron and Palmer, 1980).

To summarize the discussion thus far, the rise of industrial capitalism in Canada (which is roughly situated between 1890 and 1920) was characterized by a series of struggles for control over the production process. For capitalist ascension required breaking the control which workers, by and large, still maintained over the work process. During this period of capitalist ascension, three interrelated developments can be singled out which characterized the changes that occurred within the production process: the monopolization of Canadian industry, which, in part allowed for greater capitalist control over production inputs such as labour; the increasing rationalization of the production process through mechanization and the use of scientific management techniques; and the subsequent 'de-skilling' of the labour force. Each of these developments contributed to the erosion of workers' control, thus furthering the entrenchment of capitalist class dominance.

It is in the context of the patterns of development described above that the "Chinese question" in British Columbia becomes explicable. The next section, therefore, will consider the role of the Chinese in the economic and labour market development of B.C.

B. The Chinese in British Columbia

As Moy (1979) has argued, it is important to situate the immigration of the Chinese to the British Colonies within the historical world context. For the arrival of the Chinese to Canada in the mid nineteenth century coincided with the beginning of China's incorporation into the world capitalist market.

It was not until the mid 1800s that European imperialist powers - Britain in particular - had forced a reluctant China to make trade and legal concessions. Interestingly, a central feature of this development was the trade in opium. Prior to about 1800, the British had traded mainly their own and Indian goods (especially raw cotton) for Chinese tea and silk. But the relative self-sufficiency of the Chinese economy meant that China normally sold more than she bought, and Western merchants were forced to bring silver to make up the difference. However, after 1800, the British began substituting another currency for their depleting silver supply; Indian opium.[5] The Chinese paid for opium in silver at the port of entry and merchants then exchanged the silver for Chinese goods to be sold elsewhere in Asia or in Europe (c.f., Adams, 1972).

The large amounts of opium entering China,[6] the strong stand of the Chinese emperor against its use,[7] and Britain's demands for free trade and diplomatic equality culminated in the "Opium War" of 1839 to 1842.[8] The treaty which followed China's defeat formally opened the Chinese market to European commodities, thus subjecting Chinese local industries to foreign competition and also legitimating the opium trade. Another treaty which followed the war of 1856 to 1860 granted British subjects the privilege of engaging Chinese for overseas service, and formally endorsed the practice of contract labour.

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[5] Opium was the mainstay of the tax base for British India. India opium exports, primarily to China, provided roughly one-seventh of the total revenue for the colony (Adams, 1972:366-67).

[6] Between 1829-1839, annual imports of opium from India averaged more than 1,841 tons - almost six times the average for the 1811-1812 period (Adams, 1972:368).

[7] Opium smoking was prohibited in China in 1729. Smoking, cultivation and importation of opium were specifically banned in 1800.

While the overall effect of these treaties was to bring China within the orbit of international capital, the Western economic and military invasion had profound repercussions for the Chinese social order. The breaking down of the feudal order to create a commodity market for international capital undermined the foundations of China's self-sufficient economy and wrecked the handicraft industry (c.f., Mao in Li, 1979:322). However, as Moy has argued, nothing was more ruinous to the feudal fabric of China than the forced introduction of the opium trade.

> In the last analysis, the burden of opium was borne by the Chinese peasantry, who by the hundreds of thousands were driven off their land, often the victim of usury and absentee landlordism. The erosion of the rural social order soon created a steady stream of dispossessed, discontented landless peasants (Moy, 1979:3).

This growing number of landless peasants provided ready material for foreign labour recruiters.

The immigration of Chinese to Canada began around 1858 with the discovery of gold on the Fraser River. Like other placer miners, the Chinese moved up the West Coast from California, initially arriving there in the years following the gold discovery of 1849. But within a few years of their first appearance in B.C., the Chinese were emigrating directly from China (c.f., Woodsworth, 1941). By 1863, the Chinese population was estimated at 2,500 (Cheng, 1931; Woodsworth, 1941) and does not appear to have increased much until after 1870 (Carrothers, 1938).

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[8] See: Woodsworth (1941:Chapter One) for a discussion.

Most of the Chinese worked as miners for the first few years, usually taking up abandoned claims. As the gold rush subsided, many Chinese began serving the settler class, working as farm labourers, domestics, laundrymen and cooks, or on public works, building roads and sewage ditches. With the discovery of coal at Cumberland in 1864, the Chinese took up positions in the mines. And with the rapid development of the fishing industry after 1878, many took up positions in the salmon canneries. In 1879, the occupational distribution of the Chinese in B.C. was estimated as follows:[9]

300	domestic servants
150	shoemakers
300	laundrymen
100	tailors
700	general labourers
1800	gold miners
50	pedlars
1500	gardeners and farmhands
100	employed in fisheries

By the end of the 1870s, therefore, the Chinese were shouldering much of the unskilled work in the province, with a small percentage employed as skilled workers (for example, in shoemaking and tailoring).

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[9] Source: Royal Commission (1885), page 17. While this provides a rough estimation of the occupational distribution of Chinese in 1879, it should not be taken as an indicator of the total population of Chinese in the province, since the list does not include women and merchants and storekeepers who dealt directly with the Chinese community (c.f., Moy, 1979); and may include the same individual under more than one category, especially, for example, considering that the fishing industry was characterized by highly seasonal employment.

As Li (1980) has noted, Chinese immigration, like other international migrations, was tied to poor economic opportunities in the home country and a labour demand in the receiving country. The vast majority of Chinese coming to Canada originated from the province of Kwangtung in south eastern China, an area which had suffered the repercussions of decades of foreign intrusion, economic hardship and political unrest. Most of the immigrants were male "sojourners" who, like many of the Central European immigrants who came to Canada (c.f., Avery, 1975), were attracted by the potential opportunities for making enough money to improve their economic situation once they returned home.

One aspect of community life in south east China which facilitated emigration was the predominance of a clan or lineage system. Essentially, this system meant that an emigrant left behind him a family embedded in and supported by a lineage in which other men would take over some of his functions. In other words, individual men were "expendable" which, faced with severe economic hardships, made the promise of the "Golden Mountain" seem irresistable. Consequently, those Chinese who left their home country did so

> with the intention of maintaining solid contacts, for rather than cutting himself off from his homeland or uprooting his family from the village, he remained a member of an on-going social unit - the lineage - whose fortunes he went abroad to enhance. He left in order to remit whatever savings he could afford to aid his family in China. In effect, he left to sojourn elsewhere, with the clear intention of returning home, of supporting it in the meantime and of eventually being buried in his village (Wilmott, 1970:42).

On the other side of the coin, the initial development of the resource industries in B.C. and the infrastructure necessary to sustain them (especially the railroad) were all labour intensive endeavours which required the presence of an industrial army. In addition, an adequate supply of labour was needed to induce capital investment to the West Coast. But not simply labour, rather cheap labour, was required, particularly in resource production where labour cost was the primary factor in determining the viability of a given industry, since resource commodities carried a large export component and therefore had to remain competitive with world prices. From this perspective, Chinese labour clearly fit the bill, since the Chinese would work for low wages and China seemed to offer an endless supply of potential recruits. The presence of Chinese labour, however, was both a 'blessing' and a 'threat', depending upon one's position in the production process.

From the capitalist's point of view, the Chinese were indeed a blessing. The three main industries in British Columbia all profited directly from Chinese labour.

In mining, Robert Dunsmuir, owner of the Wellington Mines, testified before the 1885 Royal Commission that he employed from 700 to 800 Whites and Chinese in his mines, and that the Chinese did the manual work.[10] Dunsmuir further stated that:

> . . . if it were not for Chinese labour, the business I am engaged in specially, coalmining, would be seriously retarded and curtailed, and it would be impossible to sell this product and compete favorably in the market of San Francisco with vessels from other ports which carry coal as ballast.[11]

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[10] In 1884, 2,240 Chinese worked in mines, almost all above ground or as miners' helpers underground (Cheng, 1931:56).

[11] Royal Commission (1885), page 129.

In fishing, the salmon canning industry was largely predominated by Chinese workers. The fluctuating character of the industry had led to a system of contracting work out to "boss Chinamen" during salmon season. One canning operator, testifying before the 1902 Royal Commission, stated:

> No cannery on the Coast has ever successfully employed exclusively white labor. The Chinese are steady in their habits, reliable in their work and reliable to make contracts with. They won't strike while you have a big pile of fish in your dock. They are less trouble and less expensive than the Whites. They are content with rough accommodation at the cannery. If you employ white people you have to put up substantial buildings with every modern appliance, only to be occupied six weeks in the year.[12]

Finally, with regard to the lumber industry, the manager of the Hastings Mill, in testifying before the 1902 Royal Commission, stressed the importance of Chinese labour in the export trade:[13]

> I think we exported out of the province last year about thirty million feet, including what went east, and exported out of the country twenty-four million feet. It may be a coincidence and nothing more, but you will find that the mill employing the largest number of Orientals did the biggest export trade. We had to refuse business continually last year because the price offered was too low for us to sell our lumber. I do not think the Oriental question is a matter of sentiment at all, it is a matter of interest. In order to employ a large number of whites, we have to employ a large proportion of cheap labour wherever it comes from, whether white, black or yellow.[14]

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[12] Canada, Sessional Papers (1902), "Report of the Royal Commission on Chinese and Japanese Immigration," page 145 (hereafter Royal Commission (1902)).

[13] In addition, the workforce in the shingles industry was predominantly Chinese.

[14] Royal Commission (1902), page 105.

The Chinese were also seen as indispensable for the construction of the railroad. In 1882, for example, 6,000 Chinese were imported under contract to work on the Canadian Pacific Railway.[15] Andrew Onderdonk, in a letter to John A. Macdonald (dated June 14, 1882) stated his position with regard to the need for Chinese labour.[16] He argued, in part, that the importation of white labour from Europe was not practicable, that Chinese labour was more reliable, and that without the Chinese, the construction of the CPR would be delayed "twelve years longer than necessary." Onderdonk also added:

> Looking ahead still further, I believe, that after the railway is completed, the 6000 Chinese we import, should not be discouraged from remaining in the province, A country like British Columbia can be most profitably and successfully developed with a cheap class of labour. If the incoming white population are to be prosperous, they must employ cheap labour, to develop the country, to a certain extent. . . . Many industries that are now in operation could not be made profitable without Chinese labour, and many industries are underdeveloped, for want of more Chinese.[17]

In sum, Chinese immigrants provided a cheap, reliable and mobile (given the absence of families) labour supply for the burgeoning capitalist industries in B.C. But from the point of view of other workers, the Chinese posed a serious threat. This threat, however, was at the same time both 'real' and 'imaginary'.

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[15] Chinese immigration increased considerably around this time. Between 1881 and 1884, 15,701 Chinese arrived in B.C. Most came to work on the railroad (Cheng, 1931:56).

[16] See also: Onderdonk's testimony before the Royal Commission (1885), page 149.

[17] P.A.C. J. A. Macdonald Papers MG26A Vol. 321 pages 144779-80. Onderdonk to Macdonald, 14 June, 1882.

To elaborate, there is no doubt that the Chinese would work for low wages. For example, the average wages for Chinese labourers in the collieries was $1.25 per day for 8 hours underground and $1.50 per day for 10 hours on the surface, while the average earnings of white workers was $4.00 per day. Similarly, in the lumber industry, the Chinese were paid between $1.00 and $1.25 per day, while the lowest wage for whites was $2.00 per day. And in the salmon canneries, the average monthly wage for Chinese labourers in 1897 was $38.54 compared with $79.58 for white workers (Carrothers, 1938:223-4).

The reasoning behind the acceptance of lower wages by the Chinese has been variously attributed to either the comparatively low standard of living in China or the "thriftiness" of the Chinese immigrant. But it should also be recognized that the Chinese were an easily-exploited group, given that many were brought over to Canada under labour contracts (c.f., Ward, 1978:16-17). The brokers agents who hired out the Chinese were always able, when necessary, to underbid the wages demanded by Caucasians.

In addition to their acceptance of lower wages, the immigrant Chinese were one group, although not the only group, who were used as strike breakers, often on threat of deportation (c.f., Phillips, 1967). Indeed, the Chinese proved useful in the capitalist's efforts to break the power of organized labour.[18] To quote Colonel Bee, the presence of the Chinese labourer "enabled the well-to-do whites to hold a balance of power as against . . . the Trade Unions."[19] In this respect, Campbell has suggested:

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[18] The same could also be said of immigrant Italian labourers. To quote Edmund S. Kirby, manager of the War Eagle Mine: "In all the lower grades of labour, especially in smelter labour it is necessary to have a mixture of races which includes a number of illiterates who are first class workmen. They are the strength of the employer and the weakness of the union. How to head off a strike of muckers or labourers for high wages without the aid of Italian labour I do not know" (cited in Clement, 1981:37).

> It may be that the peculiar attraction of coolie-labour was not so much that it was cheap as that it was docile. There is no doubt that the coolie was a more submissive and steady worker than the British labourer (Campbell, 1923:45 emphasis added).

It could be argued, however, that the threat posed by the Chinese was very much an 'imaginary' one. By and large, the Chinese were actually segregated by industry and occupation. That is, they were predominantly employed in industries requiring little skills (the domestic/service industry, for example, as cooks, janitors, servants and so on) and in the lowest level occupations in the major industries (as miners' helpers, general labourers, or camp cooks in coal mining, for example, or making, filling and soldering cans in the salmon canning industry). In other words, whether the Chinese actually posed a direct threat to Caucasian workers is questionable. As Campbell notes:

> There is no evidence to prove that Chinese labour had entered into competition with white labour to any appreciable extent in British Columbia by 1884. The immigrant pioneers were as a rule skilled workers - while the Chinese coolies were confined exclusively to unskilled work (Campbell, 1923:43).

Indeed, much of the impetus for the fears of the white workers actually came from the capitalists. Onderdonk, for instance, argued that:

> if Chinese labour was prohibited, white men instead of finding work at high wages, would find very little work to do at all, because the theory of high wages for all precludes the possibility of high wages for any.[20]

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[19] Report of Commissioner Chapleau, Royal Commission (1885), page xciv.

[20] P.A.C. J. A. Macdonald Papers MG26A Vol. 321 page 144780. Onderdonk to Macdonald, 14 June, 1882.

In a similar vein, the manager of the Wellington Colliery (one of Dunsmuir's mines) claimed that "if Chinese and Japs were not available . . . it would compel us to reduce the white man's wage."

Nevertheless, the "threat" posed by the Chinese, whether real or imaginary, had the effect of promoting racial antagonism within the B.C. working class. For, in essence, the "definition of the situation" which was promoted was that it was the presence of cheap Chinese labour which produced wage differentials and conflicts within the workplace and not the capitalist quest for profit and control over production.

Consequently, Chinese labour played an integral role in the general assault on workers' control which was at the heart of the rise of industrial capitalism in Canada. Due to a combination of factors, the Chinese proved to be an easily exploitable group in the hands of the B.C. capitalists, who used them in a variety of ways to undermine the position of organized, skilled labour. The tendency for unskilled labour to be drawn from particular racial and ethnic groups, and the resulting hostility which their perceived threat created, placed the Chinese in an even more precarious position within B.C. society.

Furthermore, the differential distribution of the fruits of industrial development served to exacerbate the tensions described above. Although the course of development was certainly fraught with ups and downs, it would appear that capitalists - in general - fared well.

Despite the abundant comment regarding boom-and-bust, some economic historians (c.f., Bertram, 1963; Bliss, 1974) have argued that 1870 to 1915 can be characterized as a period of steadily increasing industrialization and growth in Canada. Census of Canada statistics from 1881 to 1911 regarding the number of establishments, the number of hands per establishment and the value of products per establishment certainly bear out this contention. In addition, Myer's (1972) History of Canadian Wealth amply documents the impressive fortunes which were amassed during this period.[21]

If for Canada's capitalist there were handsome payoffs during this period of industrial development, for large sections of the working class the streets were not paved with gold. Not only was the working class in general losing control of the production process, they were also suffering the consequences of low wages, poor and unsafe working conditions, fast rising prices and insecure employment.[22] For a large number of Canadian workers, just making ends meet was a constant battle. A 1915 federal Department of Labour study, for example, found that while prices and rents had soared through 1895 to 1915, wages had seldom kept pace (cited in Heron and Palmer, 1980:59). In fact, Canadian ideologues were hardpressed to reconcile the generally poor position of wage earners with the myth of the 'new world': that "unadorned virtue and simple hard work automatically brought fulfillment beyond measure" (Smith, 1980:181-2).

The situation for British Columbian workers generally and Chinese immigrants specifically was not unlike the rest of Canada. In fact, Jamieson (1968:67) has argued that the wages/prices disjunction was especially acute in British Columbia. Railway contractors were notorious for not only paying starvation wages, but also for cheating their employees out of much of what little they earned (Robin, 1972: 148-9). As well, living and working conditions in B.C.'s mining towns were atrocious and decidedly unsafe (c.f., Bercuson, 1978: Chapter 1; Phillips, 1967). Employment in B.C.'s resource industries was seasonal and often fluctuated wildly as overseas demand ebbed and flowed.

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[21] A very clear illustration of the magnitude of capitalist gain is found in the formation and dissolution of a Dunsmuir partnership with three British naval officers. In 1869, a Lieutenant Diggle contributed $5,000 to the partnership which was involved in coal mining in Vancouver Island. Diggle sold his share to Dunsmuir in 1883 for $700,000, a capital gain of 14,000 percent in 14 years! (Phillips, 1967:8).

[22] See: for example, Bliss (1974) for a discussion of the "workingman's welfare" during this era.

Chinese immigrants took the brunt of these conditions full-face. Often lured to Canada with wild promises, they were especially exploited: they not only worked for the lowest wages but were also subject to very insecure employment, often left to fend for themselves when the term of their labour contracts expired. These conditions prompted the Chinese Benevolent Association to continually warn and implore fellow countrymen not to come to Canada because it offered them few jobs, low pay, a high cost of living and many Chinese in Canada were unemployed - "often five or six out of ten" (Lai, 1973). This situation produced the 'appalling' Chinese ghettos of early British Columbia, a situation not dissimilar to the living conditions of other workers. The stark reality of these ghettos combined with the role played by Chinese immigrants within industrial development produced what Robin (1972:33) aptly describes as "fertile ground for the propogation of a racial mystique fed by economic realities."

Needless to say, Canada's and B.C.'s working classes did not simply accept the changes in and direction and consequences of industrial development. The strategies employed and intensity of working class response was varied and complex - but respond they did.

C. Responses of the Working Class

This portion of the discussion has the same general aim as the preceding segments: to attempt to situate the "Chinese question" within the dynamics of working class responses to the rise of industrial capitalism in Canada generally and B.C. specifically. Implicit in the following analysis is the contention that explanations relying heavily upon psychological notions of "pure racism" are inadequate. Such accounts connote that consciousness generally and racial and ethnic hostility more specifically are "sui generis, unfolding like a flower from the seed instead of being primarily a social creation" (Cauldwell, 1971:161).

Yet, it is not the intention here to suggest that some deeply held attitudes of "pure racism" toward the Chinese were not operative. Quite to the contrary, many individuals of the "British type" in the population, including workers, were racist in their outlook. For example, Ward's (1978:Chapter 1) discussion of the "John Chinaman" stereotype evident in British Columbia, while it does not allow us to sort out the class/race relation, does provide evidence of a long-standing prejudice against Orientals which was part of the cultural heritage brought to Canada by those of the "British type."[23] Although the labour question was at the forefront in the stance taken against the Chinese, they were also consistently portrayed as morally lax: idolatrous, offensive, unclean, drug addicts and on and on.

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[23] Following Ward (1978:ix-x) racism can be defined as "invidious discrimination among differing racial groups; generally such beliefs and actions are based upon assumptions that racial characteristics are fixed, genetically transmitted, and capable of hierarchical ranking on some scale of superiority and inferiority."

Nevertheless, one major problem with the "social psychological" explanation found in analyses such as Ward's is that it falls apart when applied to the ethnic hostility exhibited by the "British type" in other parts of Canada. There were many displays of equally vigorous contempt for Russians, Ukrainians, Jews, Italians and so on which simply cannot be explained by reference to the "somatic norm image" argument utilized by Ward (1978:21).[24]

What will be argued here, therefore, is that it is the nature and development of class relations which provide the major determinants of racial prejudice and discrimination. Stated differently, the racism and anti-Asiatic posturing by the working class in British Columbia makes more sense when placed within the context of capitalist development and the escalating capital/labour struggle over control of production. Part of the race/class connection has already been touched upon in a previous section; that is, the use of immigrant 'greenhands' by the capitalist class and the formation of a split labour market. At present, it is important to examine the forms and intensity of working class industrial and political action and the ways in which race became part and parcel of that action.

Generally speaking, most workers came to accept the increasing use of mechanization as an inevitable addition to the workplace. They did, however, attempt to control its ill-effects through a variety of means: "staunch enforcement of union rules, the introduction of training programmes, petitions for the establishment of training schools and, above all else, through the organization of their craft" (Heron and Palmer, 1980:53 emphasis added). Needless to say, a major offensive and defensive thrust of workers' conflict with capitalists was work stoppages of various sorts. Both organized and 'wildcat' strikes provided a potentially effective vehicle for backing workers' demands. Contrary to popular conception, however, work stoppages were not simply "bread and butter skirmishes," but instead concerned a more fundamental conflict. Heron and Palmer (1980:57), for instance, in their examination of strikes in Southern Ontario between 1900 and 1914, found that 50 percent of the strikes which took place concerned "some aspect of control of the workplace."

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[24] For a discussion of ethnic hostility see: Avery, 1979.

Union recognition was one major source of work stoppage, since such a legitimation of worker combination, for many capitalists, implied "equal power positions between capital and labour" (Bliss, 1974:74). Moreoever, the increasing use of greenhands, typically supplied through immigration, also gave rise to a good deal of working class discontent. Organizations of skilled labour, who were often at the forefront of the labour movement, were especially opposed to both the employment of greenhands and the immigration practices of the period. Employers regularly used immigration to flood the labour market in their efforts to bust unions. Jamieson (1968:69), for one, argues that many employers in fact successfully resisted unionization and won many struggles because of the volume and nature of immigration. For skilled labour, then, greenhands and immigration undermined the very foundation of their control since "the strength of craft bodies . . . traditionally resided in their ability to limit labour's availability" (Heron and Palmer, 1980: 63).

Turning to the situation in British Columbia, while some unionization occurred among skilled artisans in the 1850s,[25] in general terms, little union organization took place during the early period of B.C.'s development. Placer mining was still the predominant enterprise, and most miners were either independent operators or formed small companies with few employees. But with the gradual replacement of placer mining with the larger industrial enterprise, the entry of British Columbia into Confederation, and the construction of the railroad in the 1880s, the foundation for a trade union movement was soon laid. The 1860s and 1870s, for example, saw agitation among coal miners for steadier work, better working conditions and higher wages. In 1878, the Workingmen's Protection Association was formed in Victoria. And in 1883, a local of the Knights of Labor, a "secret society" patterned after the Masons, was formed in Nanaimo. One of the main issues to concern these early organizations was the issue of unskilled labour. It followed, therefore, that the majority expounded an anti-Chinese stance.

In the early years, any hostility toward the Chinese usually drew censure (c.f., Cheng, 1931).[26] The British Colonist of Victoria, for example, stated in 1861:

> It would be very impolite on our part with our sparse population to tolerate a species of terrorism that would drive them (the Chinese) from the country. We have plenty of room for many thousands of Chinamen (cited in Woodsworth, 1941:20-21).

If anything, the presence of the Chinese was tolerated. The colonies needed population, and the prevailing sentiment seemed to be: "if we cannot obtain one class, we must content ourselves with another" (British Colonist, 1865, cited in Woodsworth, 1941:23). This situation, however, began to change in the 1870s. Those previously engaged in placer mining began to seek jobs elsewhere. And Americans moving up the coast to B.C. were bringing with them the sentiments of the anti-Asiatic movement in California.[27]

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[25] Three craft unions were formed in Victoria, which was the commercial and service centre for the gold rush during the late 1850s and early 1860s (Phillips, 1973).

[26] One common complaint against the Chinese was that they did not pay for mining licenses. Since many worked on abandoned claims, they apparently saw no need for a license, as there was no fear that others might 'jump' it.

In 1871, Dunsmuir had used Chinese labourers to break a strike at one of his mines (c.f., Clement, 1980:33). In 1883, the miners struck at Wellington for union recognition. Added to their demands was a request that all Chinese working in the mines be fired. Indeed, that the industrial action of workers during this period centered on the issue of Chinese labour is best reflected in the position of the Workingmen's Protective Association, which was not concerned as much with collective bargaining as it was with

> the mutual protection of the working class of B.C. against the great influx of Chinese; to use all legitimate means for the suppression of their immigration; to assist each other in the obtaining of employment; and to devise means for the amelioration of the condition of the working-class of this province in general (cited in Phillips, 1967:9).

On the whole, direct political action was not favored by organized labour during the initial phases of industrial development. The exception, however, was the Knights of Labor, who expressed a disdain for strikes and collective bargaining in favor of "co-operative enterprise, the boycott, and legislative nostrums" (Phillips, 1967:11). The

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[27] An almost parallel situation as in B.C. occurred in California only several years earlier. For a discussion see: Helmer and Vietorisz (1974); Mark (1975).

Knight's political objectives centered around two main issues: the growth of monopoly power in the primary industry of the province (especially Dunsmuir's empire) and the exclusion of Orientals. In their submission to the 1885 Royal Commission, for example, the Nanaimo Branch stated:

> Chinese labor is confessedly of a low, degraded, and servile type, the inevitable result of whose employment in competition with free white labor is to lower and degrade the latter without any appreciable elevation of the former. Their standard of living is reduced to the lowest possible point, and, being without family ties, or any of those institutions which are essential to the existence and progress of our civilization, they are enabled to not only live but to grow rich on wages far below the lowest minimum at which we can possibly exist. They are thus fitted to become all too dangerous competitors in the labour market.[28]

The Knights were also involved in a riot in Vancouver in 1887, which was the most violent manifestation of anti-Chinese sentiment in British Columbia to that point in time (c.f., Roy, 1976). The alleged cause of the riot was the use of low-paid Chinese labour to clear land. Members of an "anti-Chinese committee" raided Vancouver's Chinatown.[29] Only three men were arrested, and all were later released. Charging that the Vancouver police were unable to maintain order in the city, and that the Vancouver City Council had taken no steps to halt the agitation, the provincial government passed a bill to suspend police powers and installed special constables to restore order.[30]

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[28] Royal Commission (1885), page 156.

[29] R. D. Pitt, Chairperson of the Committee, was an ardent member of the Knights of Labor.

[30] See: Roy (1976) for a description of the events. Roy argues that the provincial government's concern for the preservation of peace stemmed not so much from a desire to protect the Chinese, rather any

As a more politically-motivated body, the Knights of Labor achieved some measure of success in the form of a land tax and the 9 hour day. However, as Phillips (1967:16-17) suggests, their major "stumbling block" was the issue of Oriental exclusion: "The Knights sought the legislative exclusion of the Oriental, and while they were able to carry their campaign provincially, these measures were inevitably vetoed by the federal government." The Knights attempted to organize all workers, regardless of industry. And while they experienced some popularity in the 1880s, they declined with the expansion of craft unions.

The growth of craft and trade unions in the late 1880s received considerable impetus from the formation in 1886 of the Canadian Trades and Labor Congress (which was renamed the Trades and Labor Congress of Canada in 1892) and its American counterpart, the American Federation of Labor.[31] Both labour congresses posed a direct challenge to the Knights of Labor. The A.F.L., for example, differed radically from the Knights:

> it was organized as a loose confederation of national and local unions, whereas the latter body was one big union with subordinated assemblies; and it rejected at the outset the radical philosophy possessed by the Knights in its waning years, preferring a policy of collective bargaining to either direct or political action (Saywell, 1951:134).

Generally speaking, then, the history of the labour movement in British Columbia up to about 1890 shows a preference for industrial

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protection afforded the Chinese was an "incidental consequence" of the government's determination to avoid creating an image of the "wild west" or "frontier democracy" in B.C. The CPR had just been completed and the province was anxious to attract settlers and capital, and, hence, could not risk any bad publicity.

[31] In 1889, the Vancouver Trades and Labor Council affiliated with the C.T.L.C.

action over direct political action. This is not to say however, that the working class did not exert political influence, for politicians at all levels were cognizant of and, when forced to, responded to working class pressures (c.f., Ostry, 1960; Robin, 1972). Moreover, when a political ideology did surface, it tended to center around the immigration policies and practices of the period.

In general, labour groups across the country vehemently opposed the increasing immigration of unskilled labour (c.f., Watt, 1959; Ostry, 1960; Craven and Traves, 1979; Kealey, 1980). In British Columbia, the general opposition to immigration meant an anti-Asiatic and Oriental exclusion stance. Indeed, the issue of Chinese immigration acted as one of the main cohesive elements of labour during this early period (c.f., Saywell, 1951), as it provided fuel for labour's defense against the erosion of their control over the production process. In the main, therefore, the anti-Chinese posturing of organized labour was part of a general strategy to oppose the immigration of the unskilled rather than a purely racist reflex.

Up to the 1890s, the strikes which did occur tended to be few and local, with union membership relatively low in numbers. General unions, such as the Knights of Labor, were evident, although rather short-lived, as the prevailing trend was the formation of separate craft bodies loosely co-ordinated by congresses and city labour councils. In addition, labour organizations to this point in time were essentially conservative in nature and hesitant to engage in more direct forms of political action.

Beginning in the 1890s, however, there is evidence of a marked change in both the form and intensity of working class response. An increasing number of workers were becoming unionized;[32] and, in addition to the traditional craft bodies, there was a growing demand for industrial unionism.[33] Perhaps most notable, however, was the increasing militancy and radicalism on the part of organized labour.

On the one hand, relations between management and labour were reaching a crisis situation by the turn of the century (c.f., Saywell, 1951). Indeed, the first two decades of the twentieth century can be characterized as a period of intense and violent labour unrest. Of fourteen large and intense strikes between 1901 and 1913, six occurred in B.C. (Jamieson, 1968:67). The situation in British Columbia had become so severe that "Ralph Smith, Laurier's labour lieutenant, described British Columbia society as 'being divided into two armed camps' just as Marx had predicted" (Robin, 1972:76).

On the other hand correspondent with the increasing militancy was the appearance of socialism in the province. While the late nineteenth and early twentieth centuries saw the growth of radicalism across the country, it appears that "Canadian socialism came of age in British Columbia . . . fledgling socialist organizations emerged across the country, but B.C. became the dynamic center of the movement" (McCormack, 1977:18).

The reasons behind these developments are many. The cyclical and seasonal fluctuations of B.C. industry, depending as it did on the world market, meant high job insecurity for workers. Workers south of the border were experiencing more benefits and higher wages. And government giveaways to industry, especially in the form of land grants, were not being well-received by labour. Also important was the predominance of isolated, single industry communities. In the mining camps, for instance, the division between mine managers, representing absentee land owners, and workers was most stark. When the miners, who were subjected to unhealthy working conditions, a preponderance of accidents and deaths and unenforced safety regulations, attempted to establish unions, they were met with strong resistance from management. The mine operators perceived unions as illegitimate and restrictions on their freedoms, and used a variety of means - including blacklists, spies and the militia - to undermine workers attempts to organize (c.f., McCormack, 1977; Phillips, 1967).

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[32] Logan (1948:48) for example, has documented the growth of unionism based on Labour Gazette surveys. In B.C. the number of locals formed in the 1880s and which lasted until the end of the century amounted to 10. By 1902, there were 161 locals in B.C. and, by 1911, there were 234.

[33] The United Mine Workers of America, for example, which by 1903 had taken over jurisdiction in the coal industry, grew from a membership of 10,000 in 1897 to 400,000 in 1913 (Avery, 1979:56).

On the industrial plain, radical unions accounted for a number of pre World War I strikes in proportions much greater than their numbers (Jamieson, 1968:68). Their influence was especially evident in the mining industry.[34]

In 1895, the Kootenay miners affiliated with the Western Federation of Miners, which was based on a militant, socialistic philosophy.[35] The W.F.M. strongly supported the Industrial Workers of the

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[34] According to Clement (1981:35), coal miners in Canada, representing under 2 percent of the non-agricultural workers, accounted for 42 percent of time lost as a result of strikes between 1900 and 1913.

[35] The W.F.M. was initially formed in Montana in 1893 among miners impatient with the conservative craft union policies of the A.F.L. See: Jamieson, 1973; Phillips, 1967.

World when it was formed in 1905 and the One Big Union in 1919. And it was involved in several major strikes in B.C. in the first few years of the twentieth century.

In 1901, a local of the W.F.M. at Rossland struck for union recognition. Strike breakers were imported, and the miners were off work for six months. The miners at Fernie struck in 1902, again, for union recognition. As a result of the strike, wages were increased and better working conditions promised. In 1903, a series of strikes occurred in the collieries on Vancouver Island. Of the Ladysmith, Nanaimo, Cumberland and Wellington strikes, all but the Nanaimo workers were defeated.

The most serious strike of the period, however, occurred in 1903, when the C.P.R. dismissed several employees who were attempting to organize on behalf of the United Brotherhood of Railway Employees.[36] The clerks and baggagemen struck. In support of the Brotherhood, locals of the W.F.M. struck against the Dunsmuir coal empire, thus threatening the fuel supplies of the C.P.R. The situation soon developed into "the first great sympathy strike in B.C." (Phillips, 1967: 39), as longshoremen, teamsters and even telegraph messenger boys joined in. Nevertheless, the Company called upon the support of the conservative crafts unions and brotherhoods, and was able to break the strike. As Saywell notes:

> The end was almsot inevitable, for the forces arrayed against the Brotherhood were too strong. The wealth of the Canadian Pacific Railway, the power and influence of the Dunsmuir interests, the

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[36] The U.B.R.E. was an industrial union which, like the W.F.M., was affiliated with the American Labor Union. The A.L.U. originated out of San Francisco in 1901.

> open hostility of the Federal and Provincial Governments, and the definite antagonism of many powerful non-socialistic unions and federations created an over-powering opposition (Saywell, 1951:139-40).

The failure at such attempts at industrial action were in some ways compensated for by political action, since the socialist influence prompted more direct political involvement on the part of labour. In this respect, the year 1898 was a significant one for socialists politically. In that year Nanaimo sent Ralph Smith to B.C. legislature on an Independent Labour ticket. In addition, the Socialist Labour Party was established, which in 1900 became a part of the United Socialist Labour Party. The U.S.L.P., along with a more moderate group, the Independent Labour Party, ran candidates in the 1900 provincial election. Neither party, however, was very successful. Ralph Smith was the only victorious labour candidate. Later in 1900, Smith was elected federally and his provincial seat was filled by Hawthornewaite, a socialist.

After the 1900 election, moderates and socialists alike set about to reorganize and strengthen their political parties. In 1902, a labour convention was called at Kamloops at the invitation of the W.F.M. and a conflict between the socialist and moderate elements ensued: "The election of officers brought the question immediately to the foreground, and only after a considerable amount of jockeying were the moderate elements able to prevent complete socialist control" (Saywell, 1951:146-7). The main outcome of the convention was the formation of the Provincial Progressive Party, whose platform was a mixture of planks from different sectors of labour.

Internal dissension between the socialists and moderates contributed to the disintegration of the P.P.P. By 1903, most of the socialist groups had left the party to reorganize the old Socialist Party. The 1903 provincial election furthered the disintegration, since it was the first election in B.C. to be run along party lines.[37] While the radicals in the party joined the Socialists, the moderates were drawn to the Liberals. Out of nine candidates running for the Socialist Party in the 1903 election, two were successful (Hawthornewaite in Nanaimo and Williams in Newcastle). The Socialists also polled a considerable portion of the vote in the mining regions of the Interior. Nevertheless, the Conservatives under McBride formed the government, and by 1907 had become firmly ensconced in the B.C. legislature.

1903 marked the end of the formative years of B.C. socialism. Although the election results could not be taken as a "success," the Socialist Party had gained considerable momentum. As McCormack notes:

> By the end of 1903, the socialists had achieved a position of extraordinary power in the labour movement. The party would never control the province's trade unions, but in the future socialists would always hold positions of real authority in those unions. More important, the destruction of the P.P.P. had been disastrous for labourism and it would be fifteen years before another viable province-wide party emerged. In the intervening time the socialists became the political spokesmen for organized labour in the province, and, because of a power base in the mining camps, a force in the politics of British Columbia (McCormack, 1974:27).

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[37] Robin (1972:86) suggests that the previous system of informal group alignments failed because of its inability to create a stable climate for industrial expansion. Moreover, the growth of an articulate, radical labour movement "whose political spokesmen flourished in a fluid legislature of contesting groups" necessitated a system of disciplined parties. The proposal to introduce party lines and federal labels "was favored by both Liberals and Conservatives as a means of escaping from a powerful conflict along labour union and anti-labour union lines."

Although the political agenda of labour in general included issues such as the single tax, public ownership and so on, the socialist agenda was distinctively more extensive. The 1903 platform of the Socialist Party, for example, included: the transformation of all capitalist property into the "collective property of the workingman" and management of industry by workers; the gradual establishment of production for use and not for profit; and the conduct of public affairs in such a manner as to promote the interests of the working class alone (Saywell, 1951:148). Moreover, while the moderates within the labour movement could not be characterized as 'co-operative' with capital (as the struggle for control over production indicates), they were just as certainly not advocating the overthrow of capitalism and its dominant class, as did the socialist unions and parties. The manifesto of the Socialist Party, for example, read:

> Labour produces all wealth and to labour it should justly belong . . . in order to free the workingman from his slavery to the Capitalist the wage system must be abolished and to this and other ends labour must take the reigns of government away from capital (cited in Saywell, 1951:148).

More importantly, the socialist unions and political parties could also be distinguished from the more conservative sectors of the labour movement by their lack of support for the popular anti-Oriental stance. In the 1900 provincial election, for example, labour candidates generally stood on a platform that had become a traditional labour program - including the 8 hour day, safety legislation and anti-Orientalism. But as Phillips (1967:31) notes, "(t)he Socialists differed mainly over the issue of Oriental exclusion, which they did not basically support." Moreover, the I.W.W., whose organizing drives were directed towards unskilled, itinerant, immigrant workers - the so-called 'blanket-stiffs' - "even advocated the organization of Asiatics in British Columbia . . . (reflecting) the Wobblies commitment to the proletarian solidarity of the working class" (McCormack, 1977:101-2). For the Socialists, in other words, the "enemy" was the capitalist class and its state - and not unskilled labour, Oriental or otherwise.

By the first decade of the twentieth century, therefore, the political-economic situation in B.C. had changed markedly. The working class was better organized. And the increasing militancy and radicalism of the labour movement had altered the nature of class relations in the province. The presence of a socialist element within the working class posed a serious threat to the economic and political stability of British Columbia society. Indeed, industrial, socialist unionism was considered to be more of a threat by employers than the craft-oriented, business unionism since the socialist unions were much more intent on defining labour issues in class - rather than in ethnic or racial - terms.

It is at this point that the role of the Canadian state can be addressed, for the state occupied a very central - although precarious - position in the conflict between capital and labour. As will be seen shortly, the policies and practices of the state aided capital accumulation and, hence, the ascendancy of the capitalist class. In addition, it was primarily to the state which fell the task of meeting the challenge posed by organized labour - a task exacerbated by the fact that the state itself was often responsible for precipitating and/or intensifying working class discontent.

D. The Role of the Canadian State

It is quite clear that the activities of the Canadian state - at all levels - were instrumental to the rise of industrial capitalism in Canada. Macdonald's National Policy of 1879, for example, which guided state activity for many years in Canada, was, in its essence, aimed at fostering and enhancing economic growth and industrialization along a capitalist path. Indeed, Langdon (cited in Craven and Traves, 1979:17) has described the National Policy as a "political reflection of the rise of industrial capitalism in Canada" and a "critical triumph" for industrial capitalists.

In general terms, the intent behind the National Policy was that of 'nation building': to promote east-west expansion in order to offset the continental aspirations of the United States. But, according to Underhill, the real forces behind the National Policy were

> . . . the interests of the ambitious, dynamic, speculative or entrepreneurial business groups, who aimed to make money out of the new national community or to install themselves in the strategic positions of power within it - the railway promoters, banks, manufacturers, land companies, contractors and such people who all thought they would gain (cited in Clement, 1975:63).

Indeed, a crucial component of the National Policy, the protective tariff, proved beneficial to the capitalist class in a number of ways.

For one, the emergence of large scale factory production in the 1870s required a secure mass market. The tariff provided such a home market for Canadian manufacturers by ensuring that new settlers would buy goods produced in Canada. As the Royal Commission on Relations between Capital and Labour boasted in 1889:

> Factories of various kinds had been in existence in Canada for many years, but it was not until the impetus given by the protective tariff in 1879 had been fully felt that they became an important feature of the wealth and prosperity of the Dominion (cited in Watt 1959:7).

For another, the tariff notably speeded up the process of monopolization of Canadian industry. Myers (1972), for example, notes that the tariff served to increase the number of mergers, particularly in textiles, where many small manufacturers gave way to two giants by 1892.

Finally, the tariff created a new resource frontier in the West, where commercial and financial activities could readily expand. As Phillips (1979:7) has noted: "The purpose of the national policy was to incorporate the west as a hinterland region to St. Lawrence capital."

While the tariff component of the National Policy offered some obvious advantages to Canadian capitalists, for workers, the tariff question was not so straightforward:

> To the extent that the tariff was the *sini qua non* of the industrial system, workers had a vested interest in its maintenance: to the extent that the tariff was a mechanism for redistributing real income from workers to capitalists, it was anathema (Craven & Traves, 1979:15).

In effect, the National Policy, taken as a whole, presented a complex and confusing dilemma for labour. On the one hand, it helped to spawn the growth and development of an industrial working class in Canada.[38] Yet, on the other, the National Policy was also the source of much working class discontent. Workers, for example, saw a contradiction between the protective tariff and another crucial component of the National Policy: immigration.

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[38] Phillips (1973), for example, argues that the economic structure of the West fostered by the National Policy had a pervasive effect on the structure and course of western labour organization.

The success of the National Policy depended upon a steady supply of wage labour to work on transportation and industrial projects and to provide markets for some of the output of industrialization. As such, the government adopted an active immigration campaign which was, in part, carried out through the use of advertising, bonuses to steamship agents for wanted types of immigrants, and personal representatives working in various foreign areas (c.f., Timlin, 1960). In protest, various labour groups throughout the country, fearful of the consequences which such competition (especially from cheaper, unskilled labour) would have on their wages and job security, continually called for "protection for labour as well as for capital" (Watt: 1959:8). The Vancouver Trades and Labor Council, for example, argued:

> . . . it is neither the duty nor the function of a government which pretends to represent fairly all interests and all classes to interfere in the way it is doing in the manner of labour supply (cited in McCormack, 1974:4).

The continuance of the immigration element of the National Policy, despite the loud and energetic protests from organized labour, itself attests to the strength of the capitalist influence over the state. For the capitalist lobby consistently demanded that "immigration should supply a steady flow of cheap labour" (Avery, 1975:54).

Moreover, state compliance with the interests of capital is also evidenced by the extent of government grants in the form of cash, land and resources. Robin (1972:22), for one, has documented the extent of both the federal and provincial governments' munificence to B.C. capitalists. The "Pacific Quartet," for example, which consisted of Robert Dunsmuir, his son James and a consortium of Americans obtained from the Dominion and Provincial governments laws granting a charter for the Esquimalt and Nanaimo railway, together with subsidies of 1,900,000 acres of land and $750,000 in cash. Authorized in 1884, these donations were made for a line only 78 miles long, running from Victoria to Wellington (the site of one of the Dunsmuir collieries).[39] As Robin (1972:23) notes: "What occurred in British Columbia was a replication, dramatic and extreme, of what happened in Canada as a whole." Needless to say, such 'grand giveaways' to capital were not well received by the ranks of labour. They were taken as but further evidence of the complicity between capital and the state.

Nevertheless, the state, if it was to aid in the growth and development of industrial capitalism in Canada, could not simply ignore labour's concerns. In other words, if the National Policy was to work, some form of concessions to labour was necessary. In this respect, Ostry (1960) has suggested that the National Policy, which was first proposed by the Tories during the election of 1872, was inextricably linked with the passage of the Trade Union Act that same year. Modelled after the British legislation, the Trade Union Act essentially protected workers from the charge of criminal conspiracy for membership in unions.[40]

Ostry notes that one of the main ingredients of the National Policy's strategy was the provision and maintenance of an adequate skilled labour force. But skilled Canadian workers had been emigrating to the U.S. in search of higher wages. So long as unionization was prohibited and no effective check was available to prevent employers from reducing wages, the emigration would continue. Added to this, British workers, who had already won the right to unionize, would refrain from moving to Canada. And their skills were necessary if Canada was to develop. To ensure the cooperation of labour, therefore, Macdonald had to present himself as the "workingman's friend": a "simple cabinet maker" with the workers' interests at heart.[41] Consequently, the Trade Union Act can be interpreted as a necessary (although not sufficient) condition for the success of the National Policy.

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[39] Robin (1972:22) notes that by 1913, approximately 22 million acres of land had been granted to railway companies in B.C.

[40] Craven (1980:167) notes that the Act only provided "partial" relief, as trade unions themselves continued to face a legal disability "inasmuch as not being legal persons, their contracts were unenforceable by law."

In sum, that the state played a significant role in aiding capital accumulation and, hence, the ascendancy of the capitalist class, is evidenced by a number of state policies and practices during the initial phase of capitalist development: a tariff which protected capital's interests, an immigration policy designed to supply the kind of labour force necessary for capitalist expansion, and grants and subsidies which rendered capitalist undertakings even more profitable. In this respect, even the Trade Union Act can be viewed as beneficial to accumulation, in that it aimed at securing and enhancing the skilled sector of the labour force. What has also been indicated, however, is that the state could not simply adhere to the interests of capital to the neglect of labour, as it did so only at the risk of generating or exacerbating working class discontent. In short, the Canadian state had the task of not only aiding or enhancing capital accumulation - but legitimating it as well. In essence, the state was involved, simultaneously, on two fronts: aiding the ascendancy of the capitalist class and meeting the challenge of the working class response. For the state, as mediator of class conflict, had to contend with the increasing organization and unrest on the part of labour. That such a task was indeed carried out, and the manner in which it was executed, can be gleaned by an examination of the nature and degree of state intervention into capital-labour relations.

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[41] It should be noted that the Trade Union Act came on the heels of the Toronto printers' strike, when the Master Printers' Association, under the leadership of George Brown (a Liberal), obtained the indictment of 24 printers on a charge of criminal conspiracy. For the background to the strike see: Zerker (1981).

While the history of state involvement with the 'labour problem' antedates the turn of the century in Canada, the first decade of the twentieth century provides an appropriate focal point for an examination of state intervention into capital-labour relations. This is so for a number of reasons, certainly not the least of which was the increasing militancy and radicalism of the working class response during this period. In addition, however, the year 1900 brought with it the passage of the Conciliation Act. The Conciliation Act established the federal Department of Labour and, at the same time, "marked the entry of the Federal Parliament into the field of legislation for the conciliation of industrial disputes" (Lorentson, 1950:147).[42] The remainder of this section, therefore, will center on the role which the state played - via the Department of Labour - in the conflict between capital and labour during the first decade of the twentieth century.

The development of the Department of Labour and state activity as a whole with regard to industrial relations during this period cannot be approached without discussing William Lyon Mackenzie King. Indeed, as Craven suggests:

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[42] The Conciliation Act authorized the Minister of Labour to appoint officers or a conciliation board whose services were available on the request of employers or workers. No element of compulsion was involved and no prohibition on the right to strike or lockout was included.

> To write about the development of Canadian labour policy without discussing William Lyon Mackenzie King would be like mounting a production of _Hamlet_ without the prince (Craven, 1980:11).

King was the Deputy Minister of Labour and Editor of the _Labour Gazette_ from the time of the department's inception in 1900 until 1908, and then Minister of Labour from 1909 until the defeat of the Laurier government in 1911. As Ferns and Ostry (1955:51) note: "He was from the first the star of the show, and the impression was created that he was the author of all thought and action relating to labour." Indeed, King can be considered as the embodiment - the personification - of the strategic position which the state occupied in the conflict between capital and labour. He not only devised a whole new theory of the role of the state in industrial relations; but put that theory into practice on a number of different occasions. It becomes important, therefore, to devote some attention to King's perception of the capital-labour conflict - and the role which he saw for the state within that conflict.

Several writers (c.f., Craven, 1980; Rudin, 1972; and Whitaker, 1977) have concentrated their efforts on tracing the intellectual influences which had a bearing on King's thought. Whitaker (1977:143), for example, suggests that King's early studies at the University of Chicago provided him with "a fairly sensitive understanding of the potential power of an aroused industrial working class." Whitaker goes on to suggest that

> . . . (King's) understanding of the economic and class aspects to political conflict distinguished

> him sharply from fellow Liberals who lived more in the nineteenth than in the rapidly industrializing twentieth century with its growing class divisions and politicization of class conflicts (Whitaker, 1977:151).

Nevertheless, while cognizant of class conflicts, King held to a liberal vision of a fundamental harmony between capital and labour. Both capital and labour were viewed as legitimate parties in the productive process, with their respective returns regulated by the market. Moreover, since there was no fundamental conflict of interest between labour and capital, conflict became essentially a problem of 'consciousness' or of 'communication'. What was required, then, was a mediation between the two parties - a manipulation of consciousness to create a 'common ground' and promote agreement. As such, problems which did arise could be resolved through the use of ideological or normative measures. Indeed, it was here that King located the role of the state in industrial relations: "to mediate between the two conflicting classes to restore the natural equilibrium in the political economy" (Whitaker, 1977:152). As Ferns and Ostry have noted, the central word in King's thought was 'conciliation':

> (King) recognized the social tensions developing in industrial Canada. To vanquish the dread spectre of social conflict feared alike by employees and employers, he proclaimed this blessed word to the Dominion. Those who believed in the word were reported at length in the Labour Gazette; those who spoke darkly were seldom heard (Ferns and Ostry, 1955: 51).

Unlike earlier variants of liberalism, King's corporate liberalism acceded that labour had a role to play in the capitalist political economy. Since labour was a necessary component of production, it followed that labour should hold a status commensurate with that function. As long as industrial relations remained one-sided, King wrote, "warfare and anarchy are certain to persist" (cited in Rudin, 1972: 44). Consequently, King believed that unions had a place in industrial relations, but only those unions who were willing to co-operate with capital. All others were perceived as illegitimate: "to be fought with every weapon at the concerted disposal of capital and the state" (Whitaker, 1977:153-54). For King, this meant an explicitly anti-Socialist stance. At one point in his diary, for example, King wrote: ". . . while my love is mostly for the working classes . . . I am on the whole opposed to 'Socialistic Schemes'."[43]

In short, while King expressed some sympathy with labour, his views ultimately rested with the long-term interests of capital. And a working class - or sections of it - which challenged the very basis of King's liberal society could simply not be tolerated. As Rudin (1972:44) has observed: "The whole problem, as King perceived it, is fitting the worker to the requirements of the capitalist system."

That King adhered to this particular world view is evidenced by his actions and reflections during his tenure with the Department of Labour. It becomes necessary, therefore, to examine King's involvement in the labour unrest during this period - particularly in British Columbia - and the steps which he took to resolve it.

King received his first experience as a conciliator in October of 1900 when he was sent in to settle a strike affecting the Montreal Cottons Company in Valleyfield, Quebec. Construction workers involved in building a plant extension had struck for a wage increase from $1.00 to $1.25 a day, which was the rate being paid for similar work in the district. When the picketers attempted to prevent the delivery of supplies to the factory, five companies of troops from Montreal were called in to restrict them. Upon the arrival of the troops, the factory operatives joined in the strike in protest of the military occupation of their town. With the operations in the mills brought to a standstill, William Mulock, the Minister of Labour, sent telegrams to the parties concerned offering the services of a conciliator. King subsequently arrived on the scene and managed to persuade the workers to call off the strike and return to work. That King took credit for settling the strike is evidenced in his report in the Labour Gazette:

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[43] P.A.C. W.L.M. King Diaries MG26J1, page 1342. 23 January, 1900.

> . . . it is evident that little more than a proper understanding between the two parties was necessary to effect the settlement, but for many reasons this could not have been done without the intervention of some disinterested third party, whose duty it was to promote conditions favorable to a settlement (cited in Rudin, 1972:44).

However, what were in all likelihood the 'favorable conditions' to conciliation were largely ignored in King's account of the settlement. That is, the military occupation of the town and reports in the local newspapers that the mills would close indefinitely unless the workers capitulated undoubtedly had more to do with ending the strike than the intervention of a "disinterested third party." As Rudin (1972:45) has suggested: "Plainly more was at work at Valleyfield than King's sweet reasonableness about industrial peace." Nevertheless, the Valleyfield strike stands as King's "masterpiece" and a victory for conciliation (Ferns and Ostry, 1955). That the strikers failed to obtain their requested wage increase seemed of little consequence given that what was a potentially explosive situation had been so quickly dissipated by the Deputy Minister of Labour.

King's exposure to the situation in B.C. came not long after the Valleyfield strike. Indeed, as Ferns and Ostry (1955:56) state: "Almost from the first moment of his entry into the new Department of Labour Mackenzie King found the problem of British Columbia at his doorstep." In 1901, King was sent to B.C. to investigate and report on the industrial unrest centered at Rossland, where the Western Federation of Miners was on strike.

According to McCormack (1974:17), the strike began "as a result of efforts by the large mining companies to drive the W.F.M. out of the camp." To this end, the mine operators had been employing spies, informers, armed police and provocateurs. In July of 1901, the miners struck in an effort to preserve their union and in sympathy with their American counterparts who were also on strike. In response, the operators began importing strikebreakers from the United States in violation of the Alien Labor Act,[44] and obtained injunctions against the strikers "so sweeping that they prevented 'a union man from taking a full breath within a radius of twenty miles of a company office.' Under these instruments, union miners were quickly jailed for the harrassment of strike-breakers" (McCormack, 1977:39).[45] By the time King arrived in November, the mine managers had been able to replace the strikers, many of whom had left to find work elsewhere.

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[44] The Alien Labor Act of 1897 essentially prohibited the importation of foreign workers under contract.

[45] In addition, two of the companies brought civil cases against the union for damages. After two years of litigation, the case was decided against the union. The Rossland union hall and union fund were seized to pay for damages set at $12,500. Nevertheless, King reported in the Labour Gazette that the "longstanding litigation between the Centre Star and War Eagle Mining Companies and the Western Federation of Miners, at Rossland, B.C. was settled by a compromise satisfactory to the parties concerned" (cited in Phillips, 1967:34 emphasis added).

King came out strongly against the strike. He believed the men to be "entirely in the wrong. I have told them so and have no sympathy with them, that is to say, the agitators, for this is clearly and simply an agitators fight." He wrote to Mulock that it would be "unrighteous and disastrous" for the federal government to take any action which might allow the union "to profit from its own wrong" and recommended that, although there had been violations of the Alien Labor Act, no action should be taken against the companies."[46]

Rossland was King's first encounter with radical unionists, and the experience left him uneasy. He wrote to his friend Harper, "I have obtained a new point of view in regard to trade unionism. The situation here is one of the grossest tyranny of a labour organization . . . "[47] King felt the W.F.M. was a "gang of alien radicals" who had to be beaten back at all costs to protect the mining interests of the province (McCormack, 1977:40). As he wrote in his diary: "All of Canada can learn from B.C., the province speaks a note of warning in strongest terms against the dangers of labour democracy."[48] King's first impression of the W.F.M. was a long-lasting one - and was significant in shaping the state's response to militant industrial unions in 1903.

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[46] P.A.C. W.L.M. King Papers MG26J1 Volume 3, King to Harper, 18 November, 1901 and King to Mulock, 18 November, 1901.

[47] P.A.C. W.L.M. King Papers MG26J1 Volume 3, King to Harper, 18 November, 1901.

[48] P.A.C. W.L.M. King Diaries MG26J13, page 1688. 19 November, 1901.

As the magnitude and intensity of industrial conflict in British Columbia increased, so did the demand for some form of action on the part of the state to resolve it. The government, for example, was under strong pressure from business groups in the province to take action against the growing tide of "international" unionism emanating from the United States, which many employers saw as responsible for the growing militancy of labour. Consequently, the government responded by appointing a Royal Commission. Mulock, writing to Laurier in April of 1903, explained the purpose of the Commission as follows:

> The working people of Canada have to a large extent come under the domination of the A.F.L., whom they recognize as their friends. Perhaps it would assist to disillusion them if an intelligent Commission, one in which the working people had confidence, were to point out the injuries that have come to them because of the interference of American unions. Such an pronouncement would have an educational effect (cited in Jamieson, 1968:119).

The Royal Commission on Industrial Disputes in the Province of British Columbia was established in April of 1903, while the United Brotherhood of Railway Employees and Western Federation of Miners strikes were still in force. Mackenzie King was appointed as secretary to the Commission. Although the formal responsibility for the Commission's report rested with the Commissioners - Gordon Hunter and Elliot S. Rowe - they made it clear in their introductory statement that the secretary was also involved, noting the "invaluable assistance" of King "to whose unceasing efforts and interest in the work of the Commission is due much of any value that may be found in this report."[49]

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[49] Canada, Sessional Papers (1903) No. 36A "Report of the Royal Commission on Industrial Disputes in the Province of British Columbia," page 1, (hereafter Royal Commission (1903)).

Despite the broad title of the Commission, most of the evidence collected at the hearings and the findings and recommendations concerned the coal miners' strike on Vancouver Island and its connection with the railway strike. The Commission heard evidence of the long history of conflict in the Dunsmuir-owned coal mines and the unsuccessful attempts by miners to unionize. Dunsmuir, in testifying before the Commission, made his stand on unions quite clear:

> Que. Holding these views - an irreconcilable disbelief in organized labour, you refuse, as I understand it, to have any man in your employment who is in any way connected with a union - you have heretofore?
>
> A. No, we have never done that. We have, of course, refused to have an organization or union around the works, but we have never refused to take men on, whether union or not. We don't ask him.
>
> Que. Have you not, when you became aware of a man belonging to the union, got rid of him?
>
> A. You mean fired the heads of the union?
>
> Que. Yes.
>
> A. Every time.
>
> Que. And you have done that in pursuance of a settled policy of antagonism to organization?
>
> A. Yes, around the works (cited in Jamieson, 1971: 113-14).

In addition, the miners who testified cited a long list of grievances which had led to their decision to unionize, including restrictions on free speech and civil liberties, wage cuts and forced relocation of their homes. The Commission also learned that the C.P.R. had employed professional spies and provocateurs and "had hounded one sick and weak unionist to his death" (Craven, 1980:250).

Yet the manner in which the investigation was carried out led one prominent socialist to comment that it "was not an investigation but that the W.F. of M. and kindred international organizations were on trial" (cited in Saywell, 1951:140). Indeed, the numerous grievances expressed by the workers were either ignored or dismissed as misleading or irrelevant. Instead, the Commission concluded that the unrest was the work of a conspiracy among the affiliates of the American Labor Union to disrupt British Columbia industry. The miners, as such, had been 'tricked' or 'intimidated' into joining the W.F.M. - and had not joined or gone on strike because of legitimate grievances. Moreover, the W.F.M. and U.B.R.E. were roundly denounced as not being legitimate trade unions at all, but "conspiracies against society" and "secret political organizations" which distributed "incendiary and scurrilous literature" and in whose ranks were "socialistic agitators of the most bigoted and ignorant type."

In light of these "findings," the Commission recommended: that strikes solely because of the employment of non-union labour ought to be made punishable by law; that certain "reprehensible" actions of labour, namely, sympathetic strikes, boycotts of employers, intimidation of non-union workers, and the circulation of "scab" lists, should be declared illegal; that legislative changes should be made to restrict the activities of American unions in Canada; that new laws be passed to control unionism and collective bargaining; and, finally, that "radical, socialistic" unions such as the U.B.R.E. and the W.F.M. and their federation, the A.L.U., should be outlawed. Additionally the Report made recommendations concerning the prevention and settlement of disputes by means of compulsory investigation and compulsory arbitration in special cases (such as public service undertakings).[50]

If the Royal Commission was designed to have an "educational effect" on the working class, it fell far short of its mark. The Trades and Labor Congress, representative of the so-called "legitimate trade unions," strongly condemned the Commission's recommendations and conclusions (Jamieson, 1961:121). As Ferns and Ostry note:

> Had the recommendations of the Commission been translated into legislation the Canadian trade union movement would have been nearly destroyed. . . . Thus, even the most conservative of Canadian unions were forced to unite with the most radical unions to fight a system of union control which would have substituted for the "hard" policies of employers a "hard" policy of courts and gaols by the Government (Ferns and Ostry, 1955:63).

Moreover, the Report of the Royal Commission did not retard the growth of the militant industrial unions, as it was intended to do. If anything, it produced the opposite effect, in that the overwhelming reaction was one of indignation and an increased hostility toward and suspicion of the federal government (c.f., Jamieson, 1961; McCormack, 1977). The most significant outcome of the Commission, however, was in the distinction it made between 'good' and 'bad' unions.

> And here . . . lies the essential difference between the legitimate trade unionist and the revolutionary socialist: the former realizes that he has a common interest with the employer in the successful conduct of the business; the latter postulates an irreconcilable hostility and is ever compassing the embarrassment or ruin of the employer, all the while ignoring the fact that capital and labour are the two blades of the shears which, to work well, must be joined together by the bolt of mutual confidence, but, if wrenched apart, are both helpless and useless.[51]

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[50] See: Royal Commission (1903), Chapter VI, General Conclusions.

[51] Royal Commission (1903), pages 65-66.

As Craven (1980:252) had noted, such a distinction marked a shift away "from making the Canada-U.S. boundary the defining factor toward discriminating between market-oriented business unionism and unionism founded on 'class prejudice.'"

After the defeat in 1903, the Western Federation of Miners gave up on its efforts to organize the Vancouver Island coal miners, and the task was taken over by the United Mine Workers of America. The U.M.W.A. was involved in a dispute at Nanaimo in 1903.

Up until 1903, the two major coal mining companies on the Island had been owned by Dunsmuir and the Vancouver Coal and Land Company. While the former was blatantly hostile to trade unionism, the latter had been more compromising. In 1903, however, the Western Fuel Company took over the Vancouver Coal and Land Company properties, and began implementing a series of changes which amounted to longer hours and a reduction of real wages for the workers. The unrest generated by these changes led the miners to organize a local of the U.M.W.A., and subsequently to a company lockout. When the Department of Labour offered to mediate the dispute, the company rejected the offer, as it was unwilling to recognize the union. Despite the absence of an invitation from either party in the dispute, Mackenzie King arrived on the scene four months after the mines had been closed down. King managed to effect a settlement between the company and the miners, although the method used in doing so amounted to government encouragement of company unionism or "employee representation" rather than dealing directly with the U.M.W.A.[52]

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[52] See: Craven (1980:253-64) for an account of the negotiations which transpired.

The U.M.W.A. was also influential on the Mainland, and was involved in a strike which began in March of 1906 among coal miners at Lethbridge, Alberta over improved wages and working conditions and for union recognition. Three months into the strike, the miners expressed a willingness to arbitrate the dispute, but the company refused the offer, stating that it would only deal with the miners on an individual basis. The company then proceeded to hire 'greenhands', and commenced operation of the mines but at a greatly reduced output.

The strike resulted in a serious coal famine in large areas of Saskatchewan and Alberta. In November, King was asked to go to Alberta at the request of the Premier of Saskatchewan. He met with U.M.W.A. officials to ask for their co-operation and, despite strong opposition from the company to the federal mediation efforts, succeeded in bringing the dispute to an end. The compromises which were extracted from the company included a wage increase and a promise of non-discrimination against union members - but not union recognition.

The continuing industrial unrest and the apparent failure of the Conciliation Act to prevent and settle disputes led to the formulation and passage of the Industrial Disputes Investigation Act in 1907, whose chief architect was none other then Mackenzie King. The Lethbridge coal miners strike had especially showcased the need for more stringent legislation:

> The picture of thousands of poor homesteaders freezing to death in their sod huts all because of a recognition dispute at the mines could hardly fail to excite King's instinct for the melodramatic. 'As I lay awake in the early hours of the morning,' he wrote in the 'Confidential Memorandum', 'I conceived the idea that when I got back to Ottawa whether the strike was settled or not in my report I would draw attention to the nature of legislation making it impossible for such a situation to arise in the future (Craven, 1980:268).

The Industrial Disputes Investigation Act - or the "Lemieux Act" as it was called (after the then Minister of Labour) - provided the basis for attempting labour disputes settlement until well into W.W. II. The main impact of the Act was to firmly enscconce the state in a position of direct intervention in capital-labour relations. As Rudin (1972:46) has suggested, the Act was an "attempt to institutionalize and regulate class conflict within parameters formulated by the federal government in the hopes that such regulation would lessen the number and severity of industrial strikes."

The Lemieux Act made government intervention into an industrial dispute compulsory. Strikes and lockouts in basic industries were prohibited until their causes were determined and publicized by a committee chosen by the parties to the dispute. Either party could make application to the Minister of Labour for the appointment of a Board of Conciliators and Investigators. Each party nominated one Board member, with a third chosen by the other two. The Act prohibited strikes undertaken without thirty days prior notice or prior to the report of the board (which itself had no time limit). The penalties provided for violations were as follows: persons "inciting, encouraging or aiding . . . any employee to go or continue to go on strike contrary to the provisions of this Act shall be guilty of an offense and liable to a fine of not less than $50.00 or more than $1,000.00" (cited in Rudin, 1972:47).[53] And strikers were liable to per diem fines if found in violation.

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[53] Rudin (1972:47) has commented on the vague language of the Act in that an agent for the U.M.W.A. discovered that "inciting, encouraging, or aiding" meant he was convicted for paying out strike benefits to union workers.

In its essence, the Act temporarily deprived labour of its main bargaining weapon - the strike - while at the same time placed no effective restraints on employers to prevent such practices as the discriminatory discharge of union members or the employment of 'scabs'. Moreover, the Act legalized King's distinction between 'good' unions and 'bad' unions: good unions would obey the restrictions on the right to strike while bad unions would violate the law. Jamieson, for one, has gone so far as to suggest that the long-term consequence of the I.D.I.A. was to sap the strength and effectiveness of organized labour in Canada. He writes:

> One could argue . . . that the Act may well have given employers encouragement to resist granting full recognition to unions, in so far as it prevented the latter from striking or picketing at the most strategic time, while failing to protect them from employer attack. The Act thus may well have delayed the evolution, in Canada, of mature collective bargaining. Particularly did this tend to be the case where King, and subsequently other federal mediators and boards, frequently used the disputes settlement strategy of arranging agreements between employers and committees of their employers, instead of with *bona fide* unions (Jamieson, 1971:129).

Craven, however, has taken issue with this interpretation, largely because of its implied assumption that "mature collective bargaining" is the desired end-state of the evolution of industrial relations systems. In contrast, what Craven highlights as the most essential characteristic of the Act is that its emphasis on the prevention of strikes and lockouts meant that attention was diverted away from a quest for 'fairness' or 'equity' in disputes settlements toward the *ad hoc* suspension of hostilities. In other words, what is most significant about the Act is not so much the outcome of particular interventions - but the mode of intervention which it imposes on all disputes:

> . . . the I.D.I.A. conception that the public interest is to be identified with the orderly operation of industry entails, no matter what the fortunes of individual employers or groups of workers, a generalized defence of private property rights by the capitalist state (Craven, 1980:306 emphasis added).

Similarly, it could be argued that in seeking to prevent work stoppages, the state invariably fed into the hands of capital. As Whitaker (1977:153) notes: "That the state should intervene to seek continued production at all costs would inevitably reinforce capital in its struggle with labour."

Whether or not the I.D.I.A. met its intended short-term purpose of lessening the number of strikes which otherwise might have occurred is impossible to say. What is clear, however, is that the capital-labour conflict - whether diminished by the legislation or not - continued to persist.

Clearly, the above discussion demonstrates that Mackenzie King - and the state generally - were not only aware of the growing class conflict, but also of the need to manage that conlfict in some fashion. The response which ensued included, among other things, the implementation of a legislative framework in the endeavor to 'institutionalize' that conflict in a manner compatible with the needs of the capitalist economy, and the construction of a particular 'definition of the situation' as to the particular nature of the conflict. This revolved primarily around the distinction made between 'good' unions and 'bad' unions. 'Good' unions were those willing to co-operate with capital and the state, whereas 'bad' unions, such as the U.B.R.E., the W. F.M. and the U.M.W.A., were ones which were hostile and should therefore be outlawed. Such a distinction, and the attempt to enforce it, was obviously present, for example, in the Report of the 1903 Royal Commission.

Very much a political animal, King also put his mediation skills to work on a number of different occasions to undercut the power of organized labour. As Whitaker notes:

> King as a mediator in labour disputes showed consummate skill at playing union leaders off against one another, at undercutting their credibility and legitimacy with their members by making direct appeals to the latter over their heads and at representing the employers in the best possible light (Whitaker, 1977: 158).

Although maintaining his sympathies for the plight of the workingman, King's involvement in labour disputes - at Valleyfield, at Rossland, and so on - and his statutory contributions to industrial relations policy, indicate that his primary concern was one of ensuring "industrial peace at all costs" rather than confronting the real issues behind any particular dispute or attempting to ameliorate the worker's situation. To quote Ferns and Ostry:

> . . . there is no evidence presently available which suggests that in terms of policy, as distinct from technical advice, Mackenzie King contributed anything to the activities of Government beneficial to labour. On the contrary, there is much evidence that he and the Government . . . placed obstacles in the way of labour and limited the powers of labour to bargain. . . . The effect of his policies, as he himself subsequently admitted, had the effect of preventing workers from co-operating together to employ their social power (Ferns & Ostry, 1955:64-5).

In sum, therefore, Mackenzie King was very much the personification of the strategic position which the state occupied in the conflict between capital and labour during the first decade of the twentieth century. His perception of the 'labour problem' and his involvement in industrial disputes during this period provide ample documentation of the Canadian state's concern with the long-term interests of capital and the need to not only aid in capital accumulation, but meet the challenge which organized labour posed to capitalist hegemony as well.

E. Summation

The main intent of this Chapter has been to place the "Chinese question" within the context of the rise of industrial capitalism in Canada. To do so required the somewhat arduous task of pulling together a plethora of variables which were at work during this period. Nevertheless, what the discussion has endeavored to point out is that the late 1800s and early 1900s was a period of capitalist ascendancy in Canada, and that Chinese labour played a significant role in that ascendancy by providing a source of cheap, unskilled labour for the burgeoning capitalist industries in British Columbia. Consequently, the Chinese also became a part of the working class response to the erosion of the workers' control over production and the negative consequences for workers which capitalist development incurred.

Yet, just as the response of the working class to capitalist ascendancy varied over time and took on a variety of different forms, so too did the response of organized labour to the Chinese presence. In this context, two different periods were delineated, along with two different responses to Chinese labour. In the pre 1890 period, the workers' response showed a preference for industrial action over direct political action and the prevailing trend was toward the formation of the more conservative, business-oriented craft unions. The post 1890 period, however, saw the emergence of an increasingly more powerful trade union movement and, in particular, of a more militant and radical brand of unionism practiced by the socialist, industrial unions. The craft unions had as their main target the immigration of unskilled workers, which led to the promulgation of an explicitly anti-Asiatic response in B.C. In contrast, the socialist industrial unions were more intent on defining conflicts in class terms and, as such, refrained from adopting the popular anti-Asiatic stance.

What has also been determined is that the Canadian state was very much involved in the ushering of industrial capitalism into Canada. Both the National Policy and the actions of Mackenzie King and the Department of Labour testify to the role of the state in meeting the demands of accumulation and legitimation.

Yet, while the "Chinese question" has been generally situated within the context of the struggle for control over production which was at the heart of the rise of industrial capitalism in Canada, and the main 'actors' in that context have been identified - capital, labour and the state - what remains to be worked out is how the drug legislation fits in with the larger issue of the "Chinese question." To this end, it will be useful to return to a significant shortcoming which was earlier identified in Cook's analysis of the drug legislation: the need for a theoretically grounded explanation of why the opium legislation emerged in 1908 rather than in the 1880s. For, one test of the strength of the Marxian theory of law and crime will be the extent to which it is capable of offering such an explanation. In the next Chapter, therefore, the analysis will proceed by examining the "Chinese question" and how it was managed by the state in the 1880s and early 1900s with the aim of delineating how the tenets of the Marxian theory of law and crime apply to the factors and conditions surrounding the drug laws.

Chapter Nine

Marxist Analysis and Canadian Narcotics Legislation

From the discussion in Chapter Seven, it became evident that Canada's first drug laws were directed at the Chinese population in British Columbia. Indeed, the opium-smoking habit of the Chinese had been raised as a source of concern as early as 1885. Yet, it was not until over two decades later that the decision was made to criminalize opium use for non-medicinal purposes. The purpose of this Chapter, therefore, is to explain why the drug laws emerged when they did - and not earlier.

According to the Marxian theory of law and crime, the criminal law originates as a response to specific problems which certain groups - or "problem populations" - pose for the smooth operation of the system. Moreover, the theory postulates that whether or not the actions or behaviors of a problem population will be dealt with by criminalization is historically contingent on four sets of factors. These relate to: (1) the problem population itself; (2) the character and role of the state; (3) the nature and degree of class conflict; and (4) the stage of development of the capitalist system. In the discussion which follows, these four sets of factors will be utilized in examining the two periods under consideration: the 1880s and the early 1900s. More specifically, the aim will be to delineate how the problems posed by the Chinese question differed in nature as well as in their subsequent management by the state over time.

A. The 1880s

As noted in Chapter Eight, any hostility toward the Chinese in the early years usually drew censure. But as placer mining receded and industrialization began to take root, Chinese labourers took up positions within the major industrial enterprises. Corresponding to their movement into unskilled jobs was an increase in anti-Chinese agitation. In effect, anti-Orientalism accompanied the entry of British Columbia into Confederation. As Judge Matthew Begbie stated before the 1885 Royal Commission:

> I do not think that the feeling of the Whites against Chinamen has much changed; but I do not recollect anything that can be called 'agitation' against them until Confederation.[1]

British Columbia entered Confederation in 1871. One of the major conditions of that entry was the completion of a transcontinental railway. At the same time, the federal government gained authority over immigration and aliens. The Chinese question, however, was at this point very much a local matter, outside the sphere of national policies and politics. Consequently, the transfer of authority over immigration and aliens to the federal level, and its close correspondence with the railway question, became an early source of conflict between the two levels of the state.

Efforts to restrict Chinese immigration at the provincial level began with the first session of the B.C. legislature. For in 1872, Robson (Nanaimo) moved that a bill imposing a $50 head tax on all Chinese be passed.[2] Two days later, he moved that steps be taken to prevent employment of Chinese labourers on public works.[3] Attempts to impose a head tax were again introduced by Robson in 1874[4] and by Smith in 1876.[5] Smith proposed that a head tax of $10 be imposed on every male of 18 years who wore long hair in the shape of a tail or queue. This phraseology was used to avoid the appearance of imposing a special tax on aliens, which was a federal prerogative. These attempts were all unsuccessful. What did succeed, however, was a motion in 1873 (introduced by Robson) for a bill to disenfranchise Chinese at the provincial level.[6]

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[1] Royal Commission (1885), page 72.

[2] British Columbia, Journals of the Legislative Assembly (1872), page 15.

In 1878, the Walkem administration introduced a bill to prohibit the employment of Chinese on public works and impose a license of $10 for every three months on Chinese over twelve residing in the province. Any person employing Chinese had to provide a list, and heavy penalties were imposed for failure to do so. Any Chinese who failed to secure a license would be fined $100 or imprisoned.[7] The Bill passed the legislature and was assented to by the Lieutenant Governor, but was declared unconstitutional by the B.C. Supreme Court on the grounds that it interfered with the regulation of trade and commerce and the naturalization of aliens, which were federal matters. The disallowance of the legislation marked the beginning of the conflict between the provincial and federal levels of the state over the Chinese question. As Robin (1972:32) notes: "Henceforth, the Oriental question became a heated source of dispute between the federal and provincial governments and anti-Orientalism a requisite for holding political office."

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[3] Ibid., page 16.

[4] Ibid., (1874), page 18.

[5] Ibid., (1876), page 45.

[6] Robin (1972:54) suggests that the Oriental franchise exclusion was intended to serve a two-fold purpose: "It pacified the growing anti-Oriental feeling of a population seeking scapegoats in depressed times and it made re-election more difficult for T. B. Humphrey, an acid-tongued opponent of Walkem who had the support of Chinese voters."

[7] British Columbia, Statutes, (1878), (42 Vict c35).

In 1879, a committee was appointed by the B.C. legislature "to enquire into and report on the best means in their opinion to deal with our Chinese population and to prevent further immigration of Chinese into the province." The committee recommended that a petition be sent to the House of Commons requesting measures to prevent further immigration of Chinese into the province.[8] A second committee was later appointed to inquire into the Chinese question. It put the number of Chinese in the province at 6,000, and attributed the strong antipathy to the Chinese to four causes: (1) their moral and social condition was degraded; (2) they were opposed to any assimilation; (3) the system of coolie labour had defied conpetition; and (4) slave labour had a degrading effect wherever it existed. The committee also recommended that the Dominion government be requested to restrict Chinese immigration.[9] Both reports were accepted, but no immediate action was taken (c.f., Cheng, 1931:41).

The Chinese question was raised in the House of Commons for the first time in 1878 when Bunster (Vancouver Island) introduced a resolution to insert a clause in every contract let for the construction of the C.P.R. that "no man wearing his hair longer than five and one-half inches shall be deemed eligible for employment on said work. . . ."[10] His rationale for such a motion was that the Chinese were a "growing and intolerable nuisance" who had introduced many evils:

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[8] British Columbia, Journals of the Legislative Assembly, (1879), page xxi.

[9] Ibid., page xxiv.

> Canadians should take measures to protect themselves against the introduction of a population so detestable, and prevent their manhood from degenerating through the use of the opium drug, which was worse than all the liquor ever distilled, and other evils he would not mention which had been introduced by these people. . . .[11]

Tupper's response to the motion, which was subsequently defeated, appeared to reflect the prevailing view of the House:

> Although, no doubt there was a great deal of truth in what had been stated in regard to the character of the Chinese and the unfortunate difference in the habits prevailing among them as compared to those with which we had become accustomed, the fact could not be overlooked that in view of the difficulties which would have to be overcome in constructing the Pacific Railway and the great amount of labour that would be required, it could scarcely be expected . . . to decrease the amount of available labour and to increase its cost.[12]

In 1879, a petition was received from 1500 persons in B.C. led by Noah Shakespeare, a member of the Victoria City Council. The petition was introduced into the House of Commons by Amor DeCosmos, who moved that a special committee be appointed to report on Chinese labour and immigration. In response, Sir John A. Macdonald stated that while he had no objection to a special committee, it should be an 'impartial' one. The motion was carried, and a committee was formed with DeCosmos as chairman.[14]

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[10] Canada, House of Commons Debates, (1878), page 1207.

[11] Ibid., page 1208.

[12] Ibid., page 1210.

[13] Canada, Journals of the House of Commons, 19 February, 1879.

The Select Committee made their report one month later.[15] Due to a lack of time and funds, all evidence was gathered in Ottawa. With one exception, all persons examined were either Senators or Members of Parliament from British Columbia. All those who testified before the Committee agreed that the Chinese ~~were~~ undesirable, that public feeling in B.C. was against them, and that the Chinese were taking jobs away from whites. The committee recommended that Chinese immigration ought to be discouraged and that Chinese labour ought not to be employed on Dominion public works.

In 1880, more petitions were sent to Ottawa by municipal councils in Victoria and other coastal cities. As well, an Anti-Chinese Association was formed with Shakespeare as President and F. L. Tuckfield as Secretary. In April, the association presented a petition to the B.C. legislature requesting a halt to Chinese immigration. In response, two resolutions were passed. One was to send a telegram to the Dominion Parliament requesting a Chinese Restriction Act similar to one passed in Queensland, Australia in 1877. The other asked the federal government to empower the province to pass an act to regulate Chinese residents; specifically a $15 tax on each Chinese miner and a doubling of license fees for those engaged in other businesses.[16] It also required that no Chinese should be entitled to naturalization. All of these requests were ignored by the federal government.

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[14] Canada, House of Commons Debates, (1879), page 1251.

[15] See: Canada, Journals of the House of Commons, (1879), Appendix (no. 4).

[16] British Columbia, Journals of the Legislative Assembly, (1880), pages 20-21.

In the same year, DeCosmos made a motion in the House to appoint another Select Committee to investigate all petitions respecting Chinese immigration and to frame a report which would be of value at some future time when it might be taken up with a view to legislation.[17] The motion was agreed to, but no report seems to have been made.

These early attempts to limit Chinese immigration had all been unsuccessful. Nevertheless, the number of Chinese immigrants entering Canada had not increased very rapidly. Between 1876 and 1880, for example, only 2,326 Chinese had entered, an average of less than 500 per year. A large number had also left, so that the net increase was probably less than 2,000. In 1881, however, this situation changed considerably with the construction of the C.P.R. Between 1881 and 1885, 15,701 Chinese arrived, more than half between 1882 and 1883, when the demand for labour on the railroad was at its height (Cheng, 1931:45). This sudden and rapid increase led to renewed pressures for the limitation of Chinese immigration. Accordingly, the efforts of B.C. politicians to have restrictive measures imposed intensified.

In 1882, the B.C. legislature passed a resolution requesting the Dominion government to take the necessary steps to induce C.P.R. contractors to employ white labour instead of Chinese.[18] In May of that year, DeCosmos called attention in the House of Commons to a telegram from Victoria which stated: "24,000 Chinese in all are expected before August. The Chinese in the Province will number 32,000, and will outnumber the whites."[19] He then went on to quote restrictive measures which had been passed in other countries, and requested that Canada take similar action.

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[17] Canada, House of Commons Debates, (1880), page 1640.

[18] British Columbia, Journals of the Legislative Assembly (1882).

[19] Canada, House of Commons Debates, (1882), page 1476.

Macdonald's response to DeCosmos is noteworthy, as it provides insight into his position on the Chinese question. He began by claiming that: "No complaints have reached the government of serious interference with white labour in British Columbia, from the influx of Chinese labor." Macdonald then went on to state that, in his view, the Chinese were 'unassimilable':

> I share very much the feeling of the people of the United States, and the Australian Colonies, against a Mongolian or Chinese population in our country as permanent settlers. I believe they would not be a wholesome element for this country. I believe that it is an alien race in every sense, that would not and could not be expected to assimilate with our Arian population.[20]

Macdonald also cited his consultation with Onderdonk on the need for Chinese labour in constructing the C.P.R. He reasoned that: "At present it is simply a question of alternatives - either you must have this labor or you cannot have the railway." DeCosmos, in turn, conceded that " . . . as a choice between evils the Province would accept Chinese labor for the purpose of constructing the railway."[21]

In 1883, the Beaven government in B.C. passed an Order-in-Council setting out that there were 12,000 Chinese in the province, half of whom were employed on the C.P.R. It charged that the Chinese were driving white labourers away with the introduction of loathesome disease and demoralizing habits (presumably opium use) and were evading the punishment of crimes and the payment of taxes. The Chinese were labelled a

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[20] Ibid., page 1477.

[21] Ibid., page 1477.

'nonassimilable Alien race' against whom the doors of the province should be shut. As such, the Dominion government was requested to promote the necessary legislation to restrict Chinese immigration.[22] In March, a resolution was passed by the legislature urging the provincial government to adopt every constitutional method at its disposal for restricting Chinese immigration into B.C. and for compelling those who were there to comply with the revenue and other laws of the province. It also requested co-operation between the Dominion and provincial governments.[23]

Also in 1883, Noah Shakespeare was elected M.P. from Victoria, and quickly became the champion of the anti-Chinese movement in the House. His first action was to request that Parliament enact a restriction act similar in principle to the law in force in Australia. The reasons he cited were twofold: the Chinese came as slaves and white labour found it impossible to compete.[24] In response, Macdonald reiterated his position on the Chinese question, noting that "it will be all very well to exclude Chinese labor, when we can replace it by white labor, but until that can be done, it is better to have Chinese labor than no labor at all."[25] He further stated his willingness to impose restrictions on Chinese immigration at a future date:

> You must keep Chinese labor until white labor is ready to supplant it. As soon as this takes place,

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[22] British Columbia, Sessional Papers, (1838), pages 345-6.

[23] British Columbia, Journals of the Legislative Assembly, (1883), page 17.

[24] Canada, House of Commons Debates, (1883), page 323.

[25] Ibid., page 903.

> then I will go just as strongly perhaps as the hon. gentleman who has moved this resolution, in favor - perhaps not of exclusion, because it is a very strong measure for a civilized country to exclude the people of a nation with whom you trade, and whom you treat as a civilized nation or a quasi civilized nation; - but there must be some regulation one similar to that passed in the United States which amounts to exclusion, but more nearly alike to the legislation in Australia where it is regulated and restricted.[26]

In the session at the end of 1883, the B.C. legialature appointed a Select Committee to report on what could be done regarding Chinese immigration. Through the Committee's recommendation, an address was sent to the Governor General stating the Chinese population in the province to be between 15,000 and 18,000 and asking the Dominion government to regulate and restrict Chinese immigration. The Dominion government was also requested to restrict the employment of Chinese labour on public works.[27] In addition, the legislature drafted two acts which were passed in 1884.[28] One Act imposed an annual license tax of $10 on every Chinese over the age of fourteen. Violators were to be fined $40 and employers were not allowed to engage Chinese unless they had a license. Every employer had to furnish a list of Chinese to the collector of fees. Chinese who wanted to mine had to pay $15 for a certificate (the fee was $5 for whites). The Act also dealt with the living and social conditions of the Chinese. For example, no room was allowed to be occupied unless it had a window made to be opened and contained at least 384 cubic feet for each occupant. Opium smoking was also prohibited. The second Act made Chinese immigration into the province unlawful and provided for a penalty of $50 for violation. Chinese immigrants could be arrested at any time without warrant and those already in the province might remain upon applying for a certificate. Both Acts were subsequently declared ultra vires by the federal government - the first because it imposed differential taxes on the basis of race and the second on the grounds that immigration was a Dominion matter.[29]

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[26] Ibid., page 905.

[27] British Columbia, Journals of the Legislative Assembly, (1884), page 88.

[28] British Columbia, Statutes, (1884), c. 2 and 3. In introducing the bills, the Attorney General was cited by the Victoria Weekly Colonist as saying that "he did not expect that they would be allowed to become law; but they would serve to draw attention to the Dominion government to the magnitude of the question and compel them to notice it." See: P.A.C. Macdonald Papers MG26A vol. 321, p. 144733.

Also in 1884, Shakespeare made a motion in the House to prohibit the incoming of Chinese to B.C. In his rationale, he laid heavy emphasis on economic factors - the competition for jobs between whites and Chinese and the fact that the C.P.R. was nearing completion and, hence, Chinese labour would not be necessary. Macdonald argued against the motion on the grounds that it would impede the initiation of trade and commerce with China. He did, however, promise that a Royal Commission would be established to investigate the whole subject - "its trade relations, its social relations, and all those moral considerations which make Chinese immigration inadvisable."[30]

Accordingly, two Commissioners - J. A. Chapleau and Mr. Justice Gray - were appointed in July of 1884. The Commission studied conditions in San Francisco, California and Portland, Oregon and conducted sittings in British Columbia, where evidence was heard from fifty-one persons in all. The Report of the Royal Commission was presented to the House of Commons in February, 1885. The Report was divided into three sections - the first by Chapleau, the second by Gray and the third a section of "Evidence." Although (due to time constraints) the Commissioners prepared separate reports, the conclusions they reached were similar.

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[29] A third Act, which was put into force, prohibited Chinese from buying land or diverting water from any stream, river or lake in the province. See: British Columbia, Statutes, (1884), c. 4.

[30] Canada, House of Commons Debates, (1884), page 1287.

Both Commissioners agreed with the claim made by B.C.'s capitalists that Chinese labour had been a valuable economic asset to the province. Chapleau, for example, declared that Chinese labour "is a most efficient aid in the development of a country and a great means to wealth." If its use were continued, he speculated, British Columbia "would literally shoot ahead as one of the great seats of commerce and industrial activity."[31] In a similar vein, Gray found Chinese labourers to be sober, industrious and frugal and could be relied upon to fulfill their contracts.

Many of those testifying against the Chinese centered their arguments around the moral and social conditions of Chinese labourers: their 'filthy' and overcrowded quarters, the opium smoking, the gambling, the incidence of syphilis and the like. While both Commissioners agreed that the Chinese were an inferior and unassimilable race, they concluded that the statements as to the bad moral effects of the Chinese presence had been over-exaggerated. Chapleau, for example, noted that the moral standards of Chinese labourers were "not lower than that of the same class of other nationalities." He went on to suggest that the "foremost disadvantage" of the Chinese was actually one not of their own making, that is, the "irritation, discontent and resentment they inspire in white laborers." Nevertheless, the Commissioners did not accept the claim that Chinese labourers were taking jobs from Caucasians. As Gray noted: "An instance cannot be named where a sober, industrious, frugal and ordinarily sensible labouring man has ever failed to make a comfortable living in British Columbia."[32] The Commission also found no evidence to support the petition from the B.C. legislature which claimed that the Chinese were an 'expensive and objectionable class' due to their evasion of taxes, difficulties in the administration of justice and dependence of their sick and destitute upon public support.

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[31] Report of Commissioner Chapleau, Royal Commission (1885), pages cxxx and cxxxii-xxxiii.

Gray concluded that British Columbia was divided into three classes on the Chinese question. The first was "a well-meaning but strongly prejudiced minority whom nothing but absolute exclusion of Chinese would satisfy." An example here would be H. L. Tuckfield of the Victoria local of the Knights of Labor, who demanded that further Chinese immigration be stopped: "Our children must seek employment in other countries to make room for a race of cuckoos."[33] The second was "an intelligent minority who thought no legislation necessary, believing that the law of supply and demand would apply and the matter regulate itself." The most obvious example here was Robert Dunsmuir, who made a strong plea for the necessity of Chinese labour in the mining industry of the province. The third class was, according to Gray, a large majority "who believed in moderate restrictions based upon police, financial, and sanitary conditions, sustained and enforced by stringent local regulations for cleanliness and preservation of health."[34] Both Commissioners supported this last group. Chapleau, for example, endorsed the principle of "moderate restriction and sound regulation" - a principle which was clearly reflected in the recommendations made by the Commission.[35]

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[32] Report of Commissioner Gray, Royal Commission (1885), page lxiv.

[33] Royal Commission (1885), page 68.

When the Commission's Report was made public, the anti-Chinese element in British Columbia was quick to voice their "unreserved dissent." In March, the City Council of Victoria called a public meeting where a resolution was passed protesting against the Report and recommendations of the Commission. A later meeting attended by 4,000 people adopted a resolution in favor of stringent restriction.[36]

The B.C. legislature also expressed its discontent over the federal government's continued vetoing of the province's restrictive legislation and its apparent reluctance to take action on the Chinese question. A Select Committee was appointed and, upon the Committee's recommendation, a petition was sent to the House of Commons regretting the disallowance of the Act of 1884 and requesting that "some restrictive legislation be passed to prevent our province from being completely overrun by Chinese." The Chinese, it was argued, were "alien in sentiment and habits" and their presence would restrict the immigration of white labour.[37] In addition, the legislature re-enacted the disallowed Chinese Immigration Act, which was quickly put into force.[38]

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[34] Report of Commissioner Gray, Royal Commission (1885), page cii.

[35] The main recommendations of the Commission were as follows: 1. a head tax of $10 should be laid upon every Chinese entering Canada except those who merely pass through; 2. every Chinese entering Canada should be examined by a health inspector; 3. a joint tribunal comprised of judges appointed by the Dominion government and the Chinese consul (which was to be appointed) should have jurisdiction in all legal matters in which Chinese were concerned; 4. registration of all Chinese in the province should be made once a year; 5. a law similar to the Agricultural Labor Act of the United Kingdom should be passed to regulate Chinese domestic service. (Royal Commission (1885), chapter 9).

[36] See: Canada, House of Commons Debates, (1885), pages 3018-19.

The provincial Act jeopardized the coming season's work on the railway. In fact, Onderdonk wrote to George Stephen, President of the C.P.R.:

> A larger number of Chinamen will necessarily have to come from Oregon and California in the Spring to work on your road above Kamloops. It would be well for you to see that this local act is dissallowed immediately or it will embarrass us very much in getting the men into the country.[39]

Predictably, the Macdonald government complied by again disallowing the Act.

Macdonald was under growing pressure to implement his commitment to restrict Chinese immigration. In addition to pressures from British Columbia, eastern Canadian unions were sending anti-Chinese petitions to the House of Commons.[40] In the midst of the petitioning movement,

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[37] British Columbia, Sessional Papers, (1885), page 2.

[38] Ward (1978:40) notes that on at least one occasion Chinese arriving by ship were prevented from landing by virtue of the legislation.

[39] P.A.C. J.A. Macdonald Papers, MG26A 122695-96a. Onderdonk to Stephen, n.d.

[40] See: Canada, Journals of the House of Commons, (1885). Ward (1978-40) has commented: "Perhaps these smacked as much of the

Macdonald introduced an amendment to the Franchise Act to prevent any "person of the Mongolian or Chinese race" from voting in federal elections. He justified the amendment by arguing that the Chinese labourer was analogous to a 'rented machine':

> . . . when the Chinaman comes here he intends to return to his own country; he does not bring his family with him; he is a stranger a sojourner in a strange land, for his own purposes for awhile; he has no common interest with us, and while he gives us his labour and is paid for it, and is valuable, the same as a threshing machine or any other agricultural implement which we may borrow from the United States on hire . . . he has no British instincts or British feelings or aspirations, and therefore ought not to have the vote.[41]

Although the amendment was approved, it did little to quell the growing unrest in B.C.

Finally, in April of 1885 Chapleau introduced a bill in the House to restrict and regulate Chinese immigration in Canada. The provisions of the bill included: a head tax on every Chinese entering Canada, the amount to be determined by the House; the limiting of Chinese immigrants to one person per ten tons of tonnage on the vessel coming to Canada; and minor provisions regarding quarantine, registration and the like. However, the bill received strong opposition from the B.C. members, as it was perceived to be too generous. Consequently, this first bill was withdrawn and a second one introduced in which the head tax was set at $50 per person (of which the province would receive one-quarter) and the tonnage allowance was raised to one person for every fifty tons.[42]

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unions' growing desire to exercise political influence as they did of pressing concern for the Chinese threat, but no doubt this concerted campaign urged Parliament onward."

[41] Canada, House of Commons Debates, (1885), page 1582.

[42] Ibid., page 3003.

This second bill was passed, and Canada's first federal Restriction Act went into force on August 20th, 1885.

The basic tenets of the Marxian theory of law and crime offer insight into the situation up to 1885. To begin with, one of the factors specified by the theory is the stage of development of the capitalist system. As we saw in Chapter Eight, the 1880s represented the initial phase of the rise of industrial capitalism in Canada. The development of British Columbia's industries and the infrastructure necessary to promote and sustain them required an ample supply of cheap labour - in essence, an industrial reserve army which would enable the transfer of labour from one industrial project to another as needed. Chinese labourers were the chief source of such a labour supply. Their labour could be bought for low wages. And their numbers could be increased when necessary.

As a 'problem population', the threat posed by the Chinese was minimal. Chinese labour proved to be an easily exploited group given, among other factors, the conditions in China which prompted their emigration, the fact that many were brought to Canada under labour contracts, and the separation by industry and occupation of the Chinese from other workers. Nevertheless, the 'problem of control' which was posed by the Chinese question was one of how to maintain the exploitable position of this group whose labour was necessary for capitalist expansion? Clearly, the solution chosen was the dissemination and perpetuation of an ideology of racism - one which defined the Chinese as a 'morally degenerate' and 'inferior' race and, hence, 'unassimilable' with the rest of the Canadian population. In short, racist beliefs based upon the "cultural peculiarities" of the Chinese provided the justification necessary for the maintenance of B.C.'s industrial reserve army.

This ideology of racism proved to be an effective 'control strategy' in two different ways. First, as a strategy of control over the Chinese, it offered a rationale for their exclusion from basic rights of citizenship (most notably the franchise) and, hence, rendered the group even more passive and vulnerable to exploitation. As well, institutionalizing racism by way of such legal enactments had the effect of crippling the ability of Chinese workers to compete in the labour market. Second, racist sentiments provided a control strategy for the working class as a whole. Promoting the establishment of a 'split labour market' along racial lines helped to maintain the disorganization of the working class, since problems came to be defined in racial rather than in class terms. Nevertheless, at the same time that an ideology of racism solved one 'problem of control', it stimulated the development of another.

To elaborate, it was established in Chapter Eight that the working class prior to 1890 was essentially unorganized. The labour movement in British Columbia was in its infancy stage and, if anything, demonstrated a preference for industrial action over direct political action. However, racial sentiments proved to be an important source of unity for Caucasian workers, for when political action did surface it tended to center around anti-Orientalism. To cite one example, in May of 1885, an Anti Chinese Union was formed in Victoria to further the cause of federal legislation to restrict Chinese labour. As Ward notes, the working class roots of the organization were clearly evident:

> . . . the A.C.U. became a recruiting ground for the local labour movement. In October, the union heard an organizer from Seattle who urged workingmen in the audience to join the Knights of Labor. His appeal was successful, for when the meeting ended seventy-five took out membership. The Knights then embarked on their own anti-Chinese program (Ward, 1978: 42).

Consequently, labour organizations such as the Knights of Labor put pressure on both the provincial and federal levels of the state to restrict Chinese immigration and employment. To cite Phillips (1967: 15): "The Asiatic exclusion plank was the hallmark of the labour movement platform of the time."

Indeed, politicians at the local level were quick to capitalize on racial sentiments to win working class votes. And many a political career (most notably Noah Shakespeare's) was launched on a platform of anti-Orientalism. As Woodsworth notes:

> There were not wanting, of course, politicians, especially those with their eye on the labour vote, willing to take advantage of an issue on which public opinion could be so easily aroused. This tendency to make political capital out of anti-Chinese sentiment grew as feeling against Orientals increased; and the political tactics themselves tended to increase the anti-Chinese sentiment (Woodsworth, 1941:38).

Given these pressures from Caucasian workers, the Chinese question became a familiar topic of debate in the sessions of the B.C. legislature. Yet, capital also had its spokesmen in the legislature, and was successful in blocking many of the measures proposed. As Munro (1971) suggests, there is reason to wonder whether the acts passed by the provincial government during the 1870s were anything more than "hostile gestures." The Weekly Colonist of Victoria, for example, reported that the 1878 Bill was "so loosely drawn and so monstrous in its provisions that it fell to pieces in the supreme court."[43]

Clearly, the Chinese question became a source of contention between the provincial and federal levels of the state. And federal politicians from B.C. were continually pressing for restrictive measures, much of the rationale for which was couched in strong moralistic language. Also clear, however, was the fact that the federal government was not willing to move quickly on the issue. To some extent, the pull of forces in B.C. - white labour versus large scale employers, each using politicians as instruments in the struggle - allowed the Dominion government to prohibit tentative efforts to restrict the Chinese without serious consequences ensuing. As well, the issues of trade and commerce with China, Imperial considerations, federal as opposed to provincial prerogatives and even humanitarian considerations[44] provided useful justifications for disallowing the provincial legislation. Indeed, when one justification ceased to hold sway, another would be brought in to replace it. One case in point was the re-enactment of the province's Head Tax Act in 1885. It had been determined that the British government would not object to B.C.'s restrictive legislation because of any Imperial interests involved.[45] The treaty argument was thus no longer valid. Nevertheless, the Dominion government proceeded to disallow the legislature's Act on the ground that it constituted an interference with the federal power to regulate trade and commerce (c.f., Woodsworth, 1941:34).

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[43] P.A.C. J. A. Macdonald Papers MG26A Vol. 321, p. 144783.

[44] As Woodsworth (1941:40) notes ". . . to the irritation of British Columbia members, representatives of provinces not burdened with extensive Chinese populations never wearied of preaching the doctrine of brotherly love."

[45] Previously, it had been assumed that Chinese subjects had a treaty-right to enter British dominions under the terms of the Convention of Peking. But the 5th Article of the Convention had been drafted for a particular purpose - to sanction the emigration of Chinese subjects under British contracts for service - and, as such, had no reference to free or credit ticket emigration. Consequently, the Imperial

Overriding all of these issues, however, was the fact that such legislation came into direct conflict with the federal government's most immediate concern; the building of the transcontinental railway. For the completion of the railway was of crucial importance not only for the fulfillment of the terms of Confederation with British Columbia, but also for the broader aim of developing the West, which was a key element of the National Policy. As such, until the railroad was finished, any measures which threatened the supply of labour had to be quashed. That such was the case is clearly evidenced by the federal government's stand on the Chinese question.

The position of the federal government on the Chinese question can best be described as one of expediency. Macdonald, in particular, was obviously more concerned with the fate of the C.P.R. and his National Policy than with the ramblings of Bunster, DeCosmos and Shakespeare over the "Chinese evil." Although Macdonald perceived the Chinese as 'inferior' and 'unassimilable' their moral habits could be tolerated as long as their labour was needed. Onderdonk was instrumental in shaping the government's position on the matter. In a correspondence with Macdonald, he rationalized the 'immoral habits' of the Chinese by arguing: "The money expended by white laborers exceeded by nearly twenty-fold the amount expended by Chinamen in their

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Government did not overrule the Australian legislation and would not interfere with similar Canadian legislation. See: Campbell, 1923:40.

vice of opium smoking."[46] He then went on to claim:

> Although I am no advocate for Chinese, when their presence works an injury to my fellow race, still I cannot see why we should allow our dislikes for their habits and customs to override the interests of our own people, and this we do, when we fail to utilize them, when it is our common interest to do so.[47]

Furthermore, Onderdonk, as with Macdonald, held the view that the Chinese were 'sojourners', and would leave when their labour was no longer needed. For example, he testified before the 1885 Royal Commission: "I am confident that the matter of Chinese immigration will regulate itself; that Chinamen will cease to come when they are not in demand."[48]

Given that this was the government's position on the Chinese question, it was no mere coincidence that the Royal Commission and the Restriction Act came at a time when the C.P.R. was nearing completion. Indeed, the purpose of the Commission was made clear in the Introduction to the Report: "to obtain proof that the principle of restricting Chinese immigration is proper and in the best interests of the Province and the Dominion." While it was admitted that "evidence on both sides is required to arrive at a just decision," the essential task was to inform the members of Parliament "in a shape and way that would justify them in passing a prohibitive or restrictive Act."[49]

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[46] P.A.C. J. A. Macdonald Papers MG26A Volume 321, page 144778, Onderdonk to Macdonald, 14 June, 1882.

[47] Ibid., pages 144780-1.

[48] Royal Commission (1885), page 149.

[49] Report of Commissioner Chapleau, Royal Commission (1885) pages viii-ix.

The Commissioners were willing to go so far as to concede that some form of restriction was appropriate - but they made it clear as to with whose interests they sympathized. On the one hand were the Caucasian workers, who objected to competition from Chinese labour and were demanding the total exclusion of the Chinese. On the other were B.C. employers, who benefitted from the Chinese presence and were, needless to say, reluctant to see any restrictive measures imposed. The Commissioners failed to give credence to the position of the former, denying both the claims of competition from Chinese labour and the moral charges lodged against them. In this respect, one of the most serious moral charges laid against the Chinese was their addiction to opium. Gray, however, pointed out that it was rather ironic that one of the greatest objections to the Chinese on the part of British Columbia's white - and largely British - population should be based on the use of opium, as the drug had been elevated to a position of a "legitimate article of trade and commerce" by Britain. He also noted the hypocrisy of Victoria's citizenry, given that they raised no objections whatsoever to the city deriving municipal revenue of $5,500 in 1884 for issuing eleven opium licenses (c.f., Munro, 1971:47). That the Commission attempted to discredit such arguments against the Chinese could be interpreted as part of an overall effort to rationalize the presence of an important labour source. In this context, there is evidence to suggest that the Commissioners sided more with the position of the latter group - the employers.

Chapleau, in putting forth the recommendations of the Commission, cautioned that care should be taken to ensure that "existing great interests and enterprises" not be harmed. Among the interests the Commissioners had in mind, one was clearly the railroad. Gray, for example, stated:

> As it was known that the work could not be done without Chinese labor - as the evidence shows it could not have been, and most unquestionably not within the time within which it will now be accomplished - it must be assumed that whatever the Chinese evils were, they were not sufficient to counterbalance the gain to be acquired by the completion of the work, and especially it must be assumed that until such time as the burden of the cost of construction has been materially lifted from the shoulders of the general public of the Dominion, no step should be taken, unless of absolute necessity, to thwart the productive character of the road.[50]

This concern for the railway was also evident when the Bill was first introduced into the House of Commons. Chapleau, for example, refused to entertain the proposal that the tonnage limitations be raised from 50 to 100 tons on the ground that "if we adopted the suggestion of the gentleman it might interfere with the contracts of the Canadian Pacific Railway."[51] Even so, in addition to the fact that a large number of Chinese were already available in B.C. to work on the railroad,[52] ample time was given to contractors to bring in more Chinese labour before the Act came into force.[53]

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[50] Report of Commissioner Gray, Royal Commission (1885), pages xci-xcii.

[51] Canada, House of Commons Debates (1885), pages 3050-1.

[52] The Royal Commission set the number of Chinese in the province as of September, 1884 at 10,550. Munro (1971:50), however, suggests that the figure was probably closer to the popular estimate of 15,000.

[53] It was one month after the Act was passed with regard to ships from the United States, and January 1, 1886 for ships from other countries (c.f., Woodsworth, 1941).

In effect, the federal government's position on the Chinese question was contoured by the need to ensure that the prerequisites for accumulation would be met; specifically, an ample supply of labour. At the same time, however, the government was also confronted with a legitimation problem. The growing unrest in British Columbia over the Chinese question had to be responded to in some fashion. As Chapleau noted in addressing the House with respect to the Chinese question:

> I may have my own personal opinion of what I have read, and of the intelligence I have been able to obtain on this question, but I agree with my hon. friends who represent British Columbia in this House, that if they were to go back to their Province without legislation of some kind being arrived at in the direction of settling this problem, the peace of the country would be threatened.[54]

The solution chosen by the federal government was the imposition of a head tax. Indeed, the head tax was apparently quite effective at first. Between January 1st and August 20th, 1885 (when the Act came into force) nearly 4,000 Chinese had entered British Columbia. Of this number, 3,200 came from the United States and 730 from China. From August 20, 1885 to January 31, 1886, only 235 entered, all of whom came from the United States.[55] During the same period, 688 Chinese left Canada, so their number in British Columbia actually decreased. From January, 1886 to December, 1889, only 2,674 Chinese entered Canada. Of this number, 1,786 paid a head tax, while 888 were exempted (Cheng, 1931:61).

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[54] Canada, House of Commons Debates, (1885), page 3009.

[55] Cheng (1931:61) attributes the absence of immigrants directly from China to the fact that when the Act was being discussed in Parliament, the Chinese in Canada warned their friends and relatives at home not to come. As well, the number may, to a certain degree, reflect seasonal patterns of immigration.

Given the above analysis, a number of points may now be highlighted. For one, Chinese labour constituted a significant portion of B.C.'s labour force during this period. It was cheap and in ample supply, and an ideology of racism ensured that the exploitative position of the Chinese would continue to exist. For another, although the working class in B.C. was essentially unorganized, labour groups were successful in voicing their demand for immigration restrictions. In its management of this situation, therefore, the state had to take action on two fronts: accumulation and legitimation.

With regard to the former, the options open to the state were quite limited. While it was generally admitted that the Chinese were an 'inferior' and 'undesirable' race, they were also industrious and frugal and could be relied upon to fulfill their contracts, and, given that (according to Macdonald) Caucasian workers were in short supply, no other alternatives were available. As such, the position taken by the federal government was essentially one of 'expediency'. As long as Chinese labour was needed, their moral habits could be tolerated.

With respect to the latter, although Caucasian workers and their organizations did not pose a 'serious' challenge to capitalist hegemony at this stage of development, the unrest generated by the perceived threat from Chinese labour, and the racist sentiments which accompanied it, had to be contained in some fashion. In this regard, one of the options which could have been utilized was to legislate against opium use. Indeed, the volume of opium imported into the province at this time could have warranted some form of control. For example, of the 24,599 pounds of opium imported into Canada for consumption in 1882, 21,567 went to British Columbia. In 1883, the figures were respectively 32,028 and 30,235 pounds in 1884, of 60,700 pounds imported by the Dominion, 56,542 went to B.C. (Munro, 1971:47). If it had chosen such an option, the state would have given credence to the position of Caucasian workers and, hence, strengthened their demands for Oriental exclusion. Nevertheless, the state was also cognizant of the position of B.C.'s capitalists and the role of Chinese labour in the industrial development of the province. As such, it was hesitant to take any action which might jeopardize accumulation and industrial growth. Indeed, even DeCosmos was willing to concede in the House that such projects as the railroad took precedence over the "Chinese evil."

Hence, in the end, the option which was chosen was to impose moderate restrictions on Chinese immigration. Such a move acceded to the demands for some form of regulation. But at the same time, the $50 head tax would not be prohibitive enough to prevent capitalists from bringing in more Chinese labour if needed. In addition, it allowed Macdonald to rectify an earlier error in judgement since, by and large, Chinese labourers had not been returning from whence they came as the railroad neared completion (c.f., Munro, 1971).

Yet, as a legitimation measure, the head tax failed to resolve the unrest in British Columbia. Ironically, as Munro (1971:50) notes, although the legislation complied with earlier demands for a head tax, when the Bill was finally put forward it was immediately decried as "valueless" by B.C. politicians. Moreover, once the work on the C.P.R. was completed, those Chinese labourers who remained in the province sought jobs elsewhere. Consequently, anti-Chinese agitation continued,[56] along with attempts by the B.C. legislature to restrict Chinese employment.[57]

B. The Early 1900s

Prior to the turn of the century only minor amendments were made to the Chinese Restriction Act. At the same time, agitation in British Columbia against the Chinese continued. In the fiscal year ending in June of 1899, Chinese immigrants entering Canada who paid the head tax numbered 4,385 - more than double that of the previous year. In 1900, the figure was 4,231 (see: Appendix A). This increase further intensified calls for restriction. Added to the increase in Chinese immigration was a rapid influx of Japanese into the province. In 1893, there was less than 100 Japanese in Canada (c.f., Robin, 1971). By 1901, however, Japanese in B.C. numbered 4,578 the majority having arrived the previous year.[58]

The B.C. legislature had petitioned the federal government all of six times during the 1890s to increase the head tax, and had attempted to restrict Oriental immigration and employment through legislation of its own.[59] But the federal government was apparently unwilling to take action. Laurier, for one, whose Liberal government came to power in 1896, personally seemed to have little sympathy for the Oriental immigrant. But his own views were being overshadowed by Imperial interests.[60] As he told one correspondent privately:

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[56] For example, in 1890, 1,421 miners and residents of Nanaimo, Wellington and Comox petitioned the provincial government against the employment of Chinese in the mines. A similar petition was signed by 2,700 people in 1892 (Cheng, 1931:63).

[57] Realizing that the Dominion government would only disallow all local measures aimed at restricting immigration, the B.C. legislature began regulating conditions under which Chinese might be employed in the province. For example, beginning in 1886, a standard clause was inserted in every provincial act which provided that no Chinese should be employed - either directly or indirectly - in work authorized by the Act. Companies authorized to do the work were subject to a $25 fine for every Chinese they employed. See: British Columbia, Sessional Papers, (1886), page 347.

[58] Royal Commission (1902), Part II.

> On general grounds, for my part I have very little hope of any good coming to this country from Asiatic immigration of any kind. I doubt if the Japanese will amalgamate with our people, and, if the amalgamation were it to take place, would prove beneficial, but, in their (sic) case, these considerations have to be set aside for the broader consideration of the (   )ons of the Empire at large.[61]

In addition, the C.P.R., whose steamship lines earned a healthy income from the transpacific passenger trade, protested to Laurier that any increase in the head tax would result in heavy losses on their part.[62]

However, with pressures in B.C. mounting alongside the increasing Oriental immigration, the federal government eventually acquiesced.

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[59] For example, an Alien Labor Act was passed in 1897 in which it was provided that no Chinese or Japanese should be used in connection with works authorized by the province. And in the Immigration Act of 1900, a clause was inserted that every immigrant, when ordered to do so, should write a form of application in some European language to the provincial secretary. These Acts - and others like them - were disallowed by the federal government.

[60] Britain was at this time actively cultivating friendly relations with Japan, and therefore frowned upon any attempts by the colonies to legislate against Japanese immigrants.

[61] P.A.C. Laurier Papers, MG26G, p. 31995. Laurier to Rev. A. Carmen, 29 April, 1899.

[62] Between July 1, 1898 and June 30, 1899, 1334 Chinese passengers were carried to B.C. ports and 356 to other Canadian ports by Canadian Pacific Steamships for a total of $1,009,120.00 (Gold). P.A.C. Laurier Papers, MG26G, pages 35129-31, D. McNicoll to Laurier, 5 July, 1899.

In June of 1900, Laurier introduced a bill which raised the head tax from $50 to $100.[63] In addition, he announced (on the opening day of the federal election campaign no less) that a Royal Commission would be established to investigate the subject of Asiatic immigration.

The Royal Commission on Japanese and Chinese Immigration was appointed in September of 1900 under the Chairmanship of R. C. Clute. The Report of the Commission was presented early in 1902. Altogether, 336 witnesses were examined at different places in British Columbia. The two questions of Japanese and Chinese immigration were, as far as possible, considered separately.

The Report noted that the number of Chinese in British Columbia had steadily increased from 4,483 in 1880 to 8,910 in 1891 and approximately 16,000 in 1901. Most of them were adult males and had no families in Canada. The arguments presented against the Chinese by witnesses before the Commission were similar to those advanced in 1884. And the attention of the Commissioners was directed almost exclusively to the changed circumstances in economic competition between Chinese and Caucasian workers. For example, Mr. J. W. Hay, Superintendent of a Salvation Army Shelter, testified that between 800 to 1200 men had sought temporary employment at the shelter during 1900 - the majority of them being, in his words, "respectable men."[64]

The Commissioners noted that skilled labourers often had difficulty in finding an opening in their trade and were willing, if necessary, to do unskilled work. But they, together with unskilled workers, had difficulty obtaining such employment, as an Asiatic monopoly prevailed. That the Chinese were employed in many industries was readily understood according to the Commissioners:

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[63] Canada, House of Commons Debates, 1900, page 7406. See also: Canada, Statutes, 1900 (c.32).

[64] Royal Commission (1902), Part I, page 205.

> They are noted for faithful observance of contracts, they are docile, plodding and obedient to servility, easily obtained through boss contractors, accept accommodation unfit and intolerable to a white man, working in gangs under a Chinese boss who has the contract, and who makes his profits chiefly in furnishing them supplies at a high price.[65]

But the factors which made Chinese labour attractive - the absence of families, low standard of living and the like - were also held against them as presenting unfair competition for white labourers. The Commissioners proposed that the only way to terminate this competition was through the exclusion of Chinese labour. They reasoned that the economic interests of the province would not suffer, since: "There is a surplus of this class of labour at the present time ready to enter any avenue of unskilled labour that may open."[66] As well, already sufficient numbers of Chinese were in the province to meet the demands of employers. The Commissioners recommended, therefore, that the further immigration of Chinese labourers into Canada be prohibited. They suggested that the most desirable and effective means of attaining this end would be the negotiation of a treaty with China. In the meantime, however, they proposed an increase in the head tax to $500.

On the question of Japanese immigration, the Commissioners concluded that the Japanese were less objectionable in some respects than were the Chinese, but in others they were an even more serious menace.

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[65] Ibid., page 276.

[66] Ibid., page 278.

> The consensus of opinion of the people of British Columbia is that they do not and cannot assimilate with white people, and that in some respects they are less undesirable than the Chinese, in that they adopt more readily our habits of life and spend more of their earnings in the country, yet in all that goes to make for the permanent settlement of the country they are quite as serious a menace as the Chinese and keener competitors against the workingman, and as they have more energy push and independence, more dangerous in this regard than the Chinese.[67]

Nevertheless, the Commissioners were of the opinion that, as long as their numbers did not abnormally increase, no restrictive measures on the part of the Dominion government was necessary.

During the session of 1903, Parliament complied with the recommendation of the Royal Commission by introducing a bill to raise the head tax to $500.[68] The B.C. legislature had been arguing for some time for a greater portion of the head tax revenue. Premier Prior, for example, wrote in a memorandum to the federal government:

> If you deny us the right to exclude these people . . . and at the same time collect a revenue for the benefit of the Dominion in the way of a head tax you are doing a manifest injustice to the province. You practically tie our hands, impose a license fee as the price of their entering into competition with our people, and then divert three-fourths of the revenue to the treasury of the Dominion. I do not know how it strikes you, but it strikes me as forming a very grave grievance on our part.[69]

Consequently, provision was made in the bill to allot one-half of all head taxes paid to the province.

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[67] Ibid., page 397.

[68] Canada, Statutes (1903), (c.8). Consular officers, merchants and clergymen and their families, tourists, men of science, students and teachers were exempted from the Act.

[69] Canada, Sessional Papers (1903), no. 78, p. 38. Memorandum of E. G. Prior.

Opposition to the head tax was voiced by the C.P.R. and, interestingly, by B.C. citizens such as Charlotte Reid, who complained to Laurier that the head tax would cut down on the availability of Chinese household servants.[70] Between July 1 and December 31, 1903 (when the change went into force), 4,719 Chinese labourers entered Canada, the greatest number ever to enter during a six month period. None entered during the next six month period, and between July, 1904 and June, 1907, only 121 Chinese paid the head tax. However, between July, 1907 and March, 1908, this number increased significantly to 1,482 (see: Appendix A). The reason for this increase can be explained as follows:

With the increase in the head tax, competition between Chinese labourers themselves declined. As such, those working in the province were able to command higher wages, for while their labour may not have been as cheap as in the past, the Chinese were still regarded as an industrious and reliable labour source.[71] Hence, as Cheng notes:

> It took about three years for the Chinese to become fully aware of the new economic situation brought about by the increased tax, and once they realized it the number of immigrants increased by a sudden bound (Cheng, 1931:74-75).

The increase in immigration in 1907 was not confined to the Chinese. For around this time East Indian and Japanese immigration also experienced a dramatic increase in their numbers.

East Indians had begun to arrive in Canada in very small numbers at the turn of the century. In 1906 and 1907, a sudden surge in their immigration brought 4,747 to B.C.[72] The reasons for this sudden surge can be accounted for as follows:

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[70] P.A.C. Laurier Papers MG26G pages 72170-73. Charlotte Reid to Laurier, 5 April, 1903.

[71] c.f., Canada, Sessional Papers (1908). "W. L. M. King, Report of the Royal Commission to Investigate the methods by which Oriental Labourers have been induced to come to Canada during the present year," page 71.

The first Indian immigrants actually came from Hong Kong, and were induced to Canada by C.P.R. agents. As McInnes, in a report to the Minister of the Interior, Frank Oliver, stated:

> I am reliably informed that the C.P.R. Co. in this matter did not bring these Hindus to British Columbia to meet a scarcity of labour; but they started this immigration solely in their interest as carriers.[73]

Since Chinese steerage traffic had almost ceased after the importation of the $500 head tax, the steamship company was intent on finding a replacement for its lost business.

The initial East Indian immigrants to B.C. found employment in the sawmills and at clearing land at what were comparatively high wages. Reports of their 'good fortune' to those at home soon led to an increasing tide of immigrants directly from India.[74] In addition to

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[72] There are no official records on East Indian immigration prior to July, 1904, when the Dominion Immigration Office was opened in Vancouver. However, the figures for 1904 through to 1908 are as follows:

July 1, 1904 to June 30, 1905	45 entered
July 1, 1905 to June 30, 1906	587 entered
July 1, 1906 to March 31, 1907	2124 entered
April 1, 1907 to March 31, 1908	2623 entered

(cited in Cheng, 1931:138-9).

[73] P.A.C. Governors General Numbered Files file 332 vol. 199, McInnes to Oliver, 2 October, 1907.

[74] Similar to the Chinese, conditions in the home country accounted, in part, for some of this immigration. The majority of Indians who emigrated were male Sikhs. They came from the Punjab, an area which had suffered intense and growing population problems and economic hardship. Migration had become a common solution to these difficulties. (c.f., Ward, 1978:80).

these favorable reports, a number of Brahmins already in Canada as well as "certain industrial concerns" with the object of obtaining cheap unskilled labour induced several more Indians by offering to pay for their steamship passage.[75]

East Indian labourers were perceived differently from either Chinese or Japanese workers. To cite one description:

> The Hindus are not aggressive like the Japanese nor adaptive like the Chinese; they are physically unfit for the climates of British Columbia, they work in a very listless manner; they are handicapped by religious customs and prejudices and limited very much as to the kind of food they can eat without losing their caste.[76]

But, like the Chinese and Japanese, Indian labourers earned one-half to two-thirds of the wages paid to Caucasians for similar sorts of work. As such, they too were viewed as posing a threat to white workers with the result that their immigration created considerable unrest and agitation.

With respect to Japanese immigration, largely as a result of the ill-feeling in British Columbia toward Japanese labour, the Japanese government issued instructions to the Governors of its prefectures in August of 1900 to prohibit entirely for the time being the emigration of Japanese labourers to Canada. Shortly thereafter, a 'tacit understanding' was reached between the Dominion government and the Japanese authorities that the flow of emigrants from Japan would be regulated so as not to exceed four to five hundred annually. Despite this 'tacit' understanding', a significant number of Japanese labourers continued to enter B.C. For example, in November and December of 1902, 516 arrived.[77] The majority of these, however, came from the Hawaiian Islands, brought from there by Japanese labour contractors in the province. Nevertheless, the number of Japanese immigrants became progressively larger. From 354 in the fiscal year ending in June of 1905, the figure rose to 1,922 in 1906. From July to Decmeber, 1906, 2,233 arrived and from January to October, 1907, 8,125 Japanese arrived.[78] The explanation for this increase is tied to treaties which had been signed with Japan.

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[75] c.f., Canada, Sessional Papers (1908) No. 36a. "Report by W. L. M. King on Immigration from Canada to the Orient and Immigration from India in particular," page 8.

[76] P.A.C. Governors General Numbered Files file 332 vol. 199. McInnis to Oliver, 2 October, 1907.

In 1894, Britain concluded a Treaty of Commerce and Navigation with Japan. Other countries soon followed suit.[79] These treaties essentially meant that Japan gained admittance to the comity of nations on a status of equality. Adherence to Britain's treaty was made optional for Canada and the other colonies. Canada, however, became a party to the treaty in September of 1905.[80] Under the terms of the treaty, the Japanese were accorded the same rights as any British subject in Canada. Article I reads as follows:

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[77] P. A. C. Governors General Numbered File file 332 volume 200. "Report by Hon. R. Lemieux, Minister of Labour, on the Subject of the Influx of Oriental Labourers into the Province of British Columiba" (herafter cited as Lemieux Report) page 11.

[78] *Ibid*., page 7.

[79] For example, a similar treaty was signed between the United States and Japan, but with the proviso that it should not affect the laws and regulations with regard to trade, immigration of labourers, police and public security which are in force or may be enacted between the two countries. This provision made it possible for the U.S. to enact rigid immigration regulations pertaining to Japanese labourers.

[80] The treaty was finally submitted and sanctioned by Parliament in 1907.

> The subjects of each of the two high contracting parties shall have full liberty to enter, travel or reside in any part of the dominions and posessions of the other contracting party, and shall enjoy full and perfect protection for their persons and property.[81]

Given the tacit understanding which existed between the two countries, the Dominion government had entered into the treaty with the expectation that Japan would not avail herself of the letter of Article I. This expectation, however, was not realized. Even as the treaty was being finalized, Japanese emigration companies began bringing in large numbers of Japanese labourers under contract to B.C. This migration was further augmented by the close of the Russo-Japanese war and the growing competition of Portugese workers in Hawaii.[82]

The upsurge in Asiatic immigration generally served to intensify calls for restriction during the summer of 1907. In July, for example, the Victoria Trades and Labor Council appealed to Laurier to bring a halt to Japanese immigration.[83] As well, MacPherson, the Liberal M.P. for Vancouver, wrote to Laurier to express his concern over the number of Japanese labourers arriving in Vancouver and the strong sentiments of organized labour against them. Laurier, however, was not to be moved. In his reply he stated:

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[81] Cited in Lemieux Report, page 6.

[82] According to McInnes, three large agencies head-quartered in Vancouver were engaged in bringing Japanese labourers under contract direct from Japan. One large agency was bringing them both from Honolulu and Japan. And several smaller agencies brought in labourers under contract in connection with their own businesses. The larger agencies supplied labourers to employers and contractors in general. See P.A.C. Governors General Numbered File file 332 vol. 199. McInnes to Oliver 2 October, 1907.

[83] P.A. C. Laurier Papers MG26G vol. 479, pages 127065-7. Swertz, Secretary of the V.T.L.C. to Laurier, 29 July, 1907.

> The question is simply this: you have a scarcity of labour in British Columbia and there are parties in the Province with the tacit approbation of a large section of the population, who are making constant efforts to bring in Asiatics to work your lumber mills, your fisheries and your mines, and also as domestic servants. . . . I sympathize deeply with you in the delicate position in which you are and you may be sure that as far as it is possible for me to do I will not complicate matters.[84]

The B.C. legislature made an effort to stop the influx of Japanese immigrants by passing another Restriction Act. But James Dunsmuir, the Lieutenant Governor, would not give assent to the Act. The Wellington Collieries, owned by Dunsmuir, had recently entered into a contract with the Canadian Nippon Supply Company of Vancouver to procure 500 Japanese labourers.[85] It was charged, therefore, that Dunsmuir's business interests were overshadowing his role as Lieutenant Governor. Calls were made in the legislature for his removal, but were ruled out of order. The same immigration act was subsequently passed, and this time assent was given. But it was promptly disallowed by the federal government.

Such recalcitrance on the part of the federal government and the apparent impotence of the provincial legislature in taking action led many of the Caucasian workers to conclude that there was no political agency which would effectively respond to the perceived threat posed by Asiatic labour. As such, in August, the Vancouver T.L.C.

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[84] P.A.C. Laurier Papers MG26G vol. 470, pages 127063-4. Laurier to MacPherson, 8 August, 1907.

[85] P.A.C. Governors General Numbered File file 332 vol. 199. McInnes to Oliver, 2 October, 1907.

formed an Asiatic Exclusion League to further their cause (c.f., Ward, 1978). It was alleged that several hundred Japanese would be arriving by steamer on September 8th. To demonstrate their protest, the A.E.L. organized a parade on the evening of September 7th. Between eight and nine thousand people paraded to city hall, where an effigy of Lieutenant Governor Dunsmuir was burned. A meeting presided over by Von Rhein of the T.L.C. then heard speeches and passed a number of resolutions, including one condemning Dunsmuir for refusing his assent, another requesting the resignation of Premier McBride, and several others demanding an immediate end to all immigration from Asia.

The crowd then moved on to the Chinese and Japanese quarters nearby and within minutes a riot was in progress - precipitated by a rock thrown through the window of a Chinese store. A few persons were hurt and substantial property damage was incurred by Chinese and Japanese businesses. In all, it took the police four hours to restore order. Although a crowd gathered again the next day, police had blocked entrance to the area. As well, Japanese and Chinese residents had armed themselves in preparation for another onslaught. But the trouble was effectively ended.

After the riot, Chinese and Japanese labourers quit work in protest, and several factories had to close as a result. Once order was restored, however, they returned to work. And while the A.E.L. flourished for a time, organizing several offshoots of the League in other provincial centres, it had essentially died by the following summer.

The federal government responded to the riot - and the intensity of the unrest which it symbolized - in several ways.

For one, the government passed an Order-in-Council appointing Lemieux, the Minister of Labour, as a special envoy to Japan to meet with the authorities there on the question of Japanese immigration to Canada. Lemieux sailed for Japan on October 29, 1907. His Report was submitted to Parliament on January 12, 1908.[86]

For another, Mackenzie King was appointed as Commissioner to investigate the losses sustained by the Chinese and Japanese as a result of the riots. Initially, only Japanese claims were to be entertained, as the government was concerned with its diplomatic relations with Japan. Shortly after the riot, for example, the Japanese Consul General had protested to the Dominion government over the treatment of Japanese immigrants, but stated he would trust the good will of the Canadian government for a just settlement of the matter without going through diplomatic channels.[87] Moreover, Laurier was reluctant to include Chinese claims since, according to King, he "was afraid that if all claims were paid we would (have) the Gov't saddled with requests in the case of labour riots and whatnot."[88] However, the Chinese were eventually included in the investigation due, in part, to Imperial considerations. For example, in a telegram to Lord Grey, Lord Elgin stated:

> It would greatly hamper His Majesty's Govt in their efforts to obtain compensation in respect of outrages on life and property of British subjects in China if Canadian Govt refused to consider grant of compensation to Chinese.[89]

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[86] See: Lemieux Report.

[87] Canada, Sessional Papers (1908), No. 746, page 163.

[88] P.A.C. W.L.M. King Diaries MG26J13, page 2108, 12 October, 1907.

[89] P.A.C. Governors General Numbered Files file 332, vol. 200. Lord Elgin to Lord Grey, 12 December, 1907.

The Commission heard Japanese claims for two weeks beginning in late October. In all, $9,175 in damages was awarded. While King was still in Vancouver, the Dominion Parliament passed an Order-in-Council naming him as Commissioner to investigate the methods by which Oriental labourers had been induced to come to Canada during the present year. The Commission was issued on November 5, 1907, and for one month sessions were conducted at Vancouver and Victoria to examine a total of 101 witnesses. Although the words "Oriental labour" were used, King centered his attention almost exclusively on the Japanese.

King found that at the beginning of 1907 there were 7,500 Japanese in British Columbia. From January to October, 1907, 8,125 had arrived. Of that number, 77 were deported, 3,619 left for the United States and 4,429 remained in Canada. Of those remaining, 2,979 had come from the Hawaiian Islands, 7 from Mexico and 1,641 directly from Japan. Out of the 1,641 from Japan, however, 900 were sent under arrangements made by the Canadian Nippon Supply Company, 300 had been prior residents in Canada, 100 were travellers, merchants and students, and 151 had passports to the U.S. but had been denied entry. Therefore, despite the large numbers of Japanese entering Canada, the Japanese government had issued passports to only 190 new immigrants. Consequently, King held that the Japanese government was not responsible for the influx. He concluded that: Japanese holding passports to the U.S. who were rejected by American officers should be declared undesirable and not allowed to land in Canada; Japanese immigrants coming from outside of Japan should be prohibited; and emigration directly from Japan should be restricted.[90]

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[90] Canada, Report of W. L. Mackenzie King, Commissioner to Enquire into the Methods by which Oriental Labourers have been Induced to come to Canada. Ottawa: King's Printer, 1908.

King's report was submitted in June of 1908. In the meantime, Lemieux had reached a "gentleman's agreement" with the Japanese authorities. The agreement essentially meant that the Japanese government would not insist upon the complete enjoyment of rights and privileges guaranteed by the treaty when it would involve disregard of conditions which would prevail in Canada from time to time. Under this agreement, emigration was restricted to three classes: 1. those previously residing in Canada and their wives and children; 2. those specially engaged by Japanese residents in Canada for bona fide personal or domestic service; and 3. contract emigrants, where the terms of the contract, work to be done, and names and standing of intended employers were satisfactorily specified. The agreement also made concessions for emigrants brought in under contract by Japanese resident agricultural holders in Canada specifically for agricultural work. Moreover, the Japanese government agreed to limit domestic and agricultural labourers to 400 per year.[91]

In addition to the Lemieux agreement, an Order-in-Council was passed in January 8, 1908 which prohibited the landing of immigrants in Canada unless they had come from their country of origin by a continuous journey on through tickets. This measure was aimed at preventing the immigration of Japanese labourers from the Hawaiian Islands.[92] As the recommendations made by King had essentially been carried out, the Japanese question was - at least for the time being - considered 'settled'.[93]

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[91] See: Lemieux Report. The distinctive feature of this agreement - from an administrative point of view - was that the restriction was carried out by the Japanese, not Canadian, government. The only part of the agreement Canada had a share in administering was contract labourers.

[92] As well, as Lemieux noted in his Report, the government had the option of imposing the Alien Labor Act to prohibit Japanese from entering by way of the United States.

In March of 1908, King was sent to England to confer with the British authorities on the subject of immigration from India. His report was submitted on May 4, 1908. In contrast to Chinese or Japanese immigrants, those coming from India posed somewhat of a 'delicate' issue for the federal government as they too were British subjects. The authority of the federal government was circumscribed, since Indians did not come within the powers which the government exercised over aliens. Canada could not, therefore, by negotiating a treaty, place restrictions on Indian immigration. Given the sensitivity of the issue, the bulk of the representations made by King to the authorities in Britain were kept confidential. King did, however, stress in his report that it was in the best interests of the Indians themselves for Canada to limit their immigration since, according to his reasoning:

> . . . the native of India is not a person suited to this country, that, accustomed as many of them are to the conditions of a tropical climate, and possessing manners and customs so unlike those of our own people, their inability to readily adapt themselves to surroundings entirely different could not do other than entail an amount of privation and suffering which render a discontinuance of such immigration most desirable in the interests of the Indians themselves.[94]

In terms of the methods adopted to restrict East Indian immigration, King noted that warnings had been issued by the government of

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[93] This would seem to be supported by the immigration statistics, as the numbers of Japanese immigrants after the Lemieux agreement remained relatively low. For example, in the fiscal year ending in 1909, 495 Japanese entered Canada. The figure was 271 for 1910 and 437 for 1911. See: P.A.C. W.L.M. King Papers MG26JI1 vol. 80, page C61347.

[94] Canada, Sessional Papers (1908) No. 36a "Report of W. L. Mackenzie King on his Mission to England to Confer with the British authorities on the Subject of Immigration to Canada from the Orient and Immigration from India in Particular," pages 7-8.

India to offset the "glowing accounts of the opportunities for fortune-making" in B.C. As well, the Indian Emigration Act made emigration of labour under contract unlawful in countries not specified by the Act unless such countries had made laws and provisions to the satisfaction of the government of India for the protection of Indian emigrants. Unless Canada made such laws, any emigration of contract labour from India to Canada was unlawful. In addition, King cited two Canadian regulations which had a bearing on Indian immigration.

One was the 'continuous passage' rule which, although designed to control Japanese immigrants, incidentally effected Indian immigrants, since no through tickets could be bought in India, and passengers had to change steamers at either Hong Kong or Shanghai. Such a regulation would thus restrict Indians who emigrated on their own initiative or came from some place other than India.

The other regulation was one which required all immigrants to have in their possession at least $25 upon landing in Canada. On June 3, 1908, an Order-in-Council was passed which stipulated that every Asiatic immigrant, except those under the regulations of a specific statute or treaty, was required to be in possession of $200 upon landing.

Together these various methods practically put a stop to all East Indian immigration. In the fiscal year ending in 1909, only 6 Indians entered Canada. In 1910, the number was 10 and in 1911 it was 5. During this period, about 1,000 Indians returned home and another 1,000 left Canada for the United States so that, according to the Census, only 2,342 Indians remained in Canada by 1911 (cited in Cheng, 1931: 145-6).

The investigation of losses suffered by the Chinese as a result of the riot did not take place until the end of May, 1908. King held sittings over a period of three days. In all, $26,990 was paid in damages to the Chinese. It was during the course of the Commission's hearings that King heard testimony from an opium manufacturer. King learned that the opium trade had existed in the province for over twenty years, and that the only legislation to deal with it was a $500 licensing fee. While the city had endeavored to raise the fee to $2,000, the move was prohibited on the ground that since opium was one of the articles on which a tariff was levied by the Dominion government, restriction was exclusively a federal matter.[95] In the conclusion to his Report on the losses sustained by the Chinese, King made mention of the need for legislation to prohibit the importation and manufacture of opium in Canada for other than medicinal purposes. He then followed up this suggestion with a report on the need for the suppression of the opium traffic in Canada which was submitted on July 1, 1908.[96]

On the strength of King's Report, Lemieux introduced Bill 205 in the House of Commons - 'An Act to Prohibit the Importation and Sale of Opium for other than Medicinal Purposes'. The bill generated virtually no discussion in the House, but received closer scrutiny in the Senate. More specifically, the main issue of debate centered around the amount of time given to opium manufacturers to dispose of their stock.

When the bill was first being proposed, Chinese opium manufacturers began protesting the losses which would be incurred by the Act. For example, Sum Moon, President of the Chinese Board of Trade in Vancouver, sent the following telegram to King:

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[95] P.A.C. W.L.M. King Papers MG26J1, vol. C40.

[96] Canada, Sessional Papers (1908) No. 36b. "Report by W. L. Mackenzie King on The Need for the Suppression of the Opium Traffic in Canada."

> Sudden stoppage opium traffic would mean bankruptcy to Chinese capitalists in Canada. Please advise no legislative action till arrival of opium representative at Ottawa next week.[97]

The opium manufacturers had retained the Consel of T.R.E. McInnes, who petitioned Laurier to allow a ten year period for the manufacturers to close out their business, reducing their imports by ten percent each year during this period.[98]

It was noted in the Senate that $275,000 worth of opium had been imported within the last nine months, on which $60,000 had been paid in duty. Senator MacKenzie Bowell argued the unfairness of the proposed Act, stating:

> If the government permits a business to be carried on as we have done for years and years ever since confederation, until it has attained the large proportion that it has, and have received these Chinamen's money, should we keep the money and destroy the article upon which the money was collected without compensation.[99]

He then went on to argue:

> I do not think it follows that because we object to the Mongolian race becoming numerous in this country, that there should be any different law applied to them in the management of their business. . . . I agree with all the hon. gentleman has said with reference to the deleterious effects of the use of this article

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[97] P.A.C. Laurier Papers MG26G vol. 524, page 142198.

[98] P.A.C. Laurier Papers MG26G vol. 524, pages 142197-99. McInnes to Laurier, 2 July, 1908. This was essentially the approach taken by the Chinese government in dealing with the opium trade.

[99] Canada, Senate Debates (1907-8), page 1673.

> (opium), but would the hon. gentleman or the government have introduced a bill of confiscation such as this if this business had been carried on by white people? I doubt it very much.[100]

With the consent of the Privy Council, the Senate amended the Act such that opium stocks would be placed in bond and could be released whenever a sale was made abroad. The time limit to carry out such an arrangement was extended from the original three months to six months. With this amendment, the Opium Act was passed on July 20, 1908.

Chinese immigration did not decrease in the years following 1907. In 1908, 1,482 Chinese paid the head tax. In 1909, 1,411 paid the tax. And in 1910, the figure was 1,614 (see: Appendix A). In November of 1908, King was appointed as a member of the British delegation to attend the Shanghai Opium Commission which was to be held in February, 1909.[101] King travelled first to India to discuss matters of trade and commerce and emigration of Indians to Canada with the authorities there. He arrived in Shanghai in mid February and, as part of his role at the conference, submitted a report on opium and morphia in Canada to the Commission.[102]

After completing his work with the Opium Commission, King went to Peking to confer with Chinese authorities on the subject of Chinese immigration to Canada. The intent of these meetings was to negotiate an agreement with the Chinese government - similar to the one reached with the Japanese government - to limit the emigration of labourers to Canada. In the negotiations, King cited the reason why a policy of restriction was necessary, that being

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[100] Ibid., page 1674.

[101] The Commission was called at the initiative of the U.S. and Austria-Hungary, China, France, Germany, Great Britain, Italy, Japan, the Netherlands, Persia, Portugal, Russia and Siam all sent delegations. For the recommendations made by the Commission see Terry and Pellins (1970:Ch.X).

[102] P.A.C. Laurier Papers MG26G vol. 560, pages 151931-33. "Report on Opium and Morphia in Canada," February, 1909.

> the difference in the standard of living between Orientals and the people of North America forming such an element in the competition of the labouring classes had led to an agitation for exclusion both in Canada and the United States which no representative Government could afford to ignore.[103]

Canada, therefore, wished to ascertain whether - in return for the removal of the head tax - China would agree to voluntarily restrict immigration through a passport system. Under such an arrangement, persons presently exempted from the head tax would be freely admitted, labourers would be restricted to an agreed upon number, and contract labourers would be prohibited unless with the express approval of both governments. Also included was a clause which stated that the agreement "would not restrict Chinese or Canadian governments respectively to enact and enforce laws respecting immigrants and immigration as may from time to time be necessary."[104] Although the Chinese government was amenable to the agreement, the fall of the Manchu Dynasty prevented its implementation.

In the fiscal year of 1910-11, Chinese immigrants entering Canada who paid the head tax jumped to 4,515 (see: Appendix A). In addition, reports began to appear in newspapers in British Columbia that there had been a system of fraud to smuggle Chinese labourers and opium into Canada. Chinese interpreters, customs officials, members of the Liberal Executive of Vancouver and William Templeman, the Minister of Inland Revenue were all implicated in the scandal. Consequently, in November of 1910, a Royal Commission was appointed to investigate the situation. The Commissioner, Mr. Justice Murphy, held sittings in Vancouver for close to four months and submitted a ten thousand page report in May of 1911.

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[103] P.A.C. Laurier Papers MG26G vol. 567, page 153847. "Memorandum of Mr. King's visit to Peking."

[104] *Ibid.*, page 153887.

The Report declared the charges against the Vancouver Liberal Executive and Templeman to be unsubstantiated, but held that frauds were being carried out by a few Chinese together with minor officials in Customs. The Report recommended the prosecution of the guilty Chinese, but since they had already fled to China, no action was taken.

On the question of the illegal entry of Chinese immigrants, the Commission found that while the administration of the Chinese Restriction Act at Victoria had been as effective as possible, ample opportunity existed at the port of Vancouver for the illegal entry of Chinese. For example, under the Act of 1903, merchants, their wives and their children could enter without paying the tax. An undetermined but significant number of Chinese labourers had been entering as merchant exempts or as sons of merchants. As well, the port at Union Bay was practically a free port for both the entrance of Chinese and the smuggling of opium, since ships running direct from the Orient went there to coal before setting out on each return voyage. A similar situation existed at the ports of Nanaimo, Ladysmith and Boat Harbour, where tramp vessels carrying Chinese crews were numerous.

Since, it was argued, raising the head tax would only give greater incentive to fraudulent entry, the Commission recommended that an agreement be reached with China whereby a fixed number of Chinese would be allowed to emigrate to Canada each year and merchants would be issued permits. In lieu of such an agreement, it was recommended that: the administration of the Restriction Act be placed under one department[105]; a qualified white person be employed as Chief of Staff dealing with Chinese immigrants; for merchants to be exempted, they must obtain a certificate of standing from the Canadian Trade Commissioner in China; the exemption of merchants' sons be abolished or at least lowered to those under twelve years; and a more efficient watch be made of Oriental vessels at the various ports.[106]

On the question of opium smuggling, the Commission found no evidence to substantiate the charge that white officials, instead of destroying opium when seized, sold it for their own profit. However, it was noted that "opium enters Canada as freely as it ever did, in fact more freely as there is now no duty to pay."[107] Since the Opium Act came into force, the price of opium had increased considerably, thus making smuggling more profitable. The Commission argued that since the absolute prevention of opium smuggling was impossible, no matter how efficient the watch, "the only method of putting an end to its consumption is by drastic amendments to the present Act."[108] Moreover, the police regarded the question of opium as falling largely within the purview of customs officials rather than their own, since only importing and selling were offenses under the present Act. Therefore, the Commission recommended that: smoking opium or having it in one's possession be made an offense; the drastic right of search be given when opium is suspected to be on any premises; and the punishment for any offense be both fine and imprisonment.

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[105] Chinese immigration at this point was dealt with by three departments. The Department of the Interior was concerned with provisions under the Immigration Act. The Restriction Act was administered by the Department of Trade and Commerce, which also utilized the services of officers of the Customs Department.

[106] As a result of the Commission's recommendations, an Order-in-Council was passed on May 31, 1911, which transferred all matters of Chinese immigration to the Department of the Interior. By another Order-in-Council passed in August, the immigration officials of the Department of the Interior were made controllers of Chinese immigration (c.f., Cheng, 1931).

[107] Royal Commission (1910-11), page 47.

While the Royal Commission on Alleged Chinese Frauds and Opium Smuggling was still in progress, Mackenzie King introduced Bill 97 - an Act to Prohibit the Improper use of Opium and other Drugs - into the House of Commons. During the second reading of the bill, King noted that the 1908 Act had been effective in prohibiting the manufacture of opium, but that considerable amounts had been smuggled into the country, thus making the criminalization of consumption necessary. He also made a lengthy speech citing the recommendations of the Shanghia Opium Commission[109], correspondence from a parole officer which linked drug use to crime, communications from police chiefs calling for more stringent legislation, various newspaper articles on drug use, and a number of clergy, women's organizations and other reformist groups which had expressed their approval of further controls.[110]

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[108] Ibid., page 48.

[109] These included: the suppression of opium smoking; the prohibition of the export of opium to any country where it was prohibited; and the suppression of morphine and cocaine.

[110] See: Canada, House of Commons Debates (1910-11), pages 2518-30.

In responding to King's speech, Blain, for one, called for measures to curb what he perceived to be an even "greater evil" - cigarette smoking - and took King to task for his "moral reformism." Blain stated:

> I suppose the Minister of Labour has taken the role of moral reformer for the government once held by the Minister of Agriculture, and I would remind him that if he expects to be a successful moral reformer he should deal with the evils which are staring him in the face, rather than seek for evils which are less glaring. . . . I venture to say that there has been one request to this government for the introduction of this legislation, there must have been a hundred requests for the prohibition of cigarettes.[111]

Specific objections to the bill itself centered on three areas: the provision which allowed the Governor in Council to add any other drugs to the schedule was criticized as it handed over the power of Parliament to make criminal law; the requirement of keeping proper records of drugs prescribed was viewed as placing an "onerous obligation" on the medical profession; and the denial of the right of removing a conviction by certiorari was criticized as too drastic a provision. Nevertheless, the bill was passed and the Opium and Drug Act came into force in July of 1911. Two months later, the Laurier government was defeated at the polls and the Conservatives under Borden took power.

The situation in British Columbia in the early 1900s was, in some respects, quite similar to that of the 1880s. The Chinese, for one, were still in a relatively powerless position and were carrying out much of the unskilled work in the province. For another, agitation against the Chinese and their 'immoral habits' continued to persist, along with efforts by the B.C. legislature to pass restrictive laws. In contrast to the 1880s, however, was the apparent growth in magnitude of the Oriental question. Added to the increase in Chinese immigration was a large number of Japanese and East Indian immigrants. At first glance, therefore, one could interpret the situation in B.C. as primarily a 'race problem'. That is, the presence of a "Yellow Menace" in the province had increased to the point where some form of action became necessary. From this perspective, the state, in response to the influx of Asiatics and the growing anti-Asiatic sentiments, used legislation, agreement and administration to restrict the immigration of the Chinese, Japanese and Indians respectively.

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[111] Ibid., page 2539.

Yet, such an explanation fails to take into account several significant factors:

First, it is apparent that concern over Asiatic immigration was not aimed at restricting all Asians, but only one class of Asians: labourers. In the case of the Chinese, for example, a perusal of the list of those who were exempt from paying the head tax would seem to indicate that the tax was designed to control the influx of labourers into Canada and not other classes of Chinese. Indeed, King's mission to the Orient and his attempt to strike an agreement with the Chinese government to regulate emigration bears out this contention. Prior to his negotiations, King conferred with a member of the British Legation in an effort to gauge the attitude of the Chinese authorities on the matter. The response King received was that: "He did not think the Government cared a whit about the coolie classes, or how they were treated, but were very sensitive in regard to their gentry."[112] The terms of the agreement which were later negotiated would appear to confirm this statement.

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[112] P.A.C. W.L.M. King Diaries MG26J13 "Mission to the Orient," page G 2215473.

Moreover, Chinese labourers were experiencing a similar fate in other countries during this period. One country in particular was that of Japan. The employment of Chinese labourers on railway construction in Southern Japan had led to considerable agitation on the part of Japanese workers, as the Chinese were willing to accept lower wages. The attempt to import more labourers under contract was subsequently halted by an Imperial Ordinance.[113]

A second factor which calls the 'race problem' explanation into question is that while the number of Asians entering B.C. had increased during the first decade of the twentieth century, that increase had not kept pace with the increase in the number of Caucasians in the province. As noted in Table I, while the percentage of Asians to the total population in British Columbia had moved from 9.1 to 1891 to 11 in 1901, it decreased to 7.8 by 1911. More significantly, however, is that during this same period, the percentage of Asians to the White population in B.C. continued to decline from 16.5 in 1891 to 14.6 in 1901 and 8.9 in 1911. Consequently, the magnitude of the 'race problem' falls into serious doubt, since one could argue that the threat posed by the "Yellow Menace" was more imaginary than real. If this is in fact the case, then a different explanation of the events is in order.

Further to this, is the fact that - contrary to the claim of the 1902 Royal Commission that there were sufficient Caucasian workers to carry out the unskilled work in the province - B.C.'s capitalists,

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[113] P.A.C. Governors General Numbered Files file 332, vol. 199. C.M. Macdonald to E. Grey, 1 October, 1907.

TABLE I

Population of British Columbia by Racial Origin, 1881-1921

	TOTAL	NATIVES INDIANS	WHITES & OTHERS	% OF WHITES TO TOTAL POP.	CHINESE & OTHER ASIANS	% OF ASIANS TO TOTAL POP.	% OF ASIANS TO WHITE POP.
1881	49,459	25,661	19,448	39.3	4,350	8.8	22.4
1891	98,173	35,202	54,061	55.1	8,910	9.1	16.5
1901	178,657	25,488	133,605	74.8	19,566	11.0	14.6
1911	392,480	20,134	341,899	87.1	30,447	7.8	8.9
1921	524,582	22,377	459,456	87.6	39,739	7.6	8.6

Source: adapted from Ward (1978:169).

operating through agencies such as the Canadian Nippon Supply Company, continued to bring in Asian labourers under contract.[114] Following the lines of the argument advanced in the previous section, if Asiatic labourers - as a cheap labour source - were still needed for capital accumulation, then why was the state willing to restrict their numbers? Obviously, both the provincial and federal levels of the state gained significant revenues from the head tax (see: Appendix A), but this alone is insufficient to explain the efforts made to curtail Asiatic immigration.

In short, several important questions pertaining to the nature of the Oriental question and its management by the state in the early 1900s are left unanswered by an explanation of the events as purely a 'race problem'. Indeed, what will be argued here is that to fully comprehend the nature of the Chinese question and the decision to criminalize opium use in the early 1900s, the analysis must consider one key variable: the change in the form and intensity of the trade union movement in B.C. which had dramatically altered the nature of class relations in the province.

To elaborate, the situation in B.C. in the early 1900s can be interpreted, similar to the 1880s, as a 'labour problem'. Nevertheless, the nature of that problem in the two periods was markedly different. In the 1880s, the problem was essentially one of accumulation:

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[114] Contrary to the claim of writers such as Solomon and Madison (1976-77) that the state's tolerance for the Chinese lasted as long as the labour shortage did - particularly with respect to railroad construction - Asiatic labour appears to have been in demand for industrial projects - including the building of railroads - well into the 1900s. (c.f., Phillips, 1967; Robin, 1971). According to Jamieson (1973:18) railway mileage doubled between 1900 and 1920 due, in part, to the building of two new transcontinental railways between 1900 and 1913.

labour, specifically Chinese labour, was necessary for the completion of the railroad. In contrast, the problem in the early 1900s was essentially one of legitimation. As outlined in Chapter Eight, a serious political crisis of legitimacy dawned in early twentieth century British Columbia, brought on by the deteriorating material condition of the working class. And the severity of that crisis was indicated by the strength of the socialist movement in the province. Hence, the re-establishment of working class consent was an imperative condition if capitalist industrialization was to proceed. And a very important element in the re-creation of consent lay in the repression and discrediting of the socialist movement.

Thus, from 1900 onward, not only an economic - but an ideological - conflict intensified. The main battlelines in this ideological struggle to define the situation were drawn between the socialist unions and political parties on the one side and the capitalist class and its state on the other. In essence, what ensued was a class-based battle to define the "relevant properties" of the social environment. The socialists were intent on furthering a definition of the situation along class lines. 'Problems', as such, were rooted in the exploitative nature of the capitalist relations of production. The state, on the other hand, in meeting the challenge which organized labour posed to capitalist hegemony, endeavored to further a 'moral' and 'racial' perspective regarding the source of economic and social problems. That is, the unrest and discontent of the era was due to the 'moral laxity' of various groups - particularly 'foreigners' or 'aliens' - in the country. From this perspective, solutions to the country's ills lay not in a fundamental realignment of the material basis of

Canadian society, but in the "manipulation of consciousness."

Indeed, it is here where the Oriental question and the drug laws must be located. Just as an 'ideology of racism' functioned to justify the exploitative position of the Chinese in the 1880s and hence resolve an accumulation problem, an ideology founded on 'racism', 'aliens' and 'immorality' was utilized in the manufacture of consent to resolve a legitimation crisis in the early 1900s.

To begin with, there is no doubt that racism was employed in a politically opportunistic manner. Incidents of racial hostility in B.C. appear to have figured when economic conditions deteriorated and competition for jobs increased but, just as importantly, public campaigns endorsing anti-Asiatic prejudice were often associated with elections. Even James Dunsmuir, for example, when running for office in the 1900 provincial election, pledged to replace all of his Chinese workers with Caucasians if elected (c.f., Ward, 1978). In most cases, anti-Chinese organizations were short-lived, and in at least one instance, died immediately after its instigator was elected to office (c.f., Robin, 1971). These organizations appear to have formed as vehicles to "warn" the public about the dangers of the "Yellow Peril" and as a means of winning elections.

The press also played a very significant part in promoting an ideology of 'alien elements' in British Columbia. Newspapers often carried inflammatory stories and editorials warning of the 'Yellow invasion' and the havoc it would wreak on B.C. society. During the months which preceded the Vancouver riot, for instance, the urban press in B.C. "featured daily comment on the 'invasion' reports which grew sensational with every passing week" (Ward, 1978:30). Many of the leading newspapers in B.C. had direct political party links. The Trail Herald, the Victoria Colonist, the Vancouver Newsadvertiser and the New Westminister Columbian, just to name a few, were owned and operated by the Conservative Party or its members.[115] And, needless to say, the press was not above promoting racism to further political ends. One clear example of this was an episode which occurred during the provincial election campaign of 1907. A few days before the election, the Vancouver Daily Province ran a front page banner article claiming the Grand Trunk Pacific and the federal government had plotted to unload 50,000 Japanese in the province as labourers on the railway line. The editorial thanked W. J. Bowser, who was Premier McBride's prospective Attorney General and boss of the city's Tory machine for exposing the plot. In truth, however, Bowser himself was actively aiding the importation of Oriental labour, as he acted as a solicitor for a Japanese labour contractor who was bringing in railway workers in contravention of the Alien Labor Act (Robin, 1971:101).

In these ways, the Chinese (and all Asians) were consistently and continually portrayed by politicians and the press as an 'alien group' who were undermining the prosperity which B.C. had to offer its Caucasian citizens. This 'definition of the situation' was in direct contradistinction to the view of the socialist movement, which identified the capitalist class and its state as the culprits behind the unrealized expectations of the working class in B.C. Indeed, the socialists had continually refused to adhere to the ideology of racism. For example, McInnes, in a letter to Laurier late in 1907, described events in Seattle where a mass meeting of the unemployed organized by socialists had been broken up by police; 107 socialists were arrested and 35 sent to jail for 30 days hard labour. McInnes wrote:

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[115] The British Colonist, for example, had been started in 1858 by Amor DeCosmos.

> This treatment naturally aroused intense resentment among the Socialists here, which may find vent in public disorders. But if so . . . you may rest assured that they will have no bearing whatever on the Asiatic question. . . . The Socialists . . . as distinct from the Labor Unionists, have no pronounced hostility to Asiatics. Their line being to represent them in light of fellow victims of Capitalism.[116]

But while anti-Asiatic sentiments did not hold sway with the socialists, racist appeals did find support among the more conservative craft unions, especially given their explicit and implicit anti-immigration connotations. As early as 1891, for example, J. A. Fulton of the Vancouver T.L.C. made a submission to the Congress' seventh annual session to request aid in dealing with the Chinese question. Fulton cited the unfair competition with "white and Christian labor" as against the "heathen Chinese" and argued the need for legislation - not only in the form of an exclusion law - but also with respect to opium use:

> The immortality of this class of people should not be slighted. . . . Many young white persons lay the blame of their ruin directly to the Chinese, who taught them, besides other vices, the awful habit of using opium. Details of this filthy and abominable habit would be classed as obscure. It is the bounden duty of our government to enact laws that will enforce a curtailment of both the importation and manufacture of opium to and in Canada, and also limit its sale to a minimum.[117]

Accordingly, the T.L.C. added a ninth principle to its Platform -

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[116] P.A.C. Laurier Papers MG26G vol. 496, pages 134027-8. McInnes to Laurier, 20 December, 1907.

[117] Trades and Labor Congress of Cnaada, Proceedings of the Seventh Annual Session (1891), page 10.

"Exclusion of all Chinese from Canada."[118]

As Japanese and Indian immigration increased, the T.L.C. broadened its protest to include all Asiatics. On September 17, 1907, for example, the T.L.C. sent notice to Laurier of a resolution passed at its recent convention. The resolution concerned the recent influx of Japanese into B.C. which, it was argued, was driving white labour out of all the industries. It demanded that the government terminate the Japanese Treaty Act of 1906 and request the Japanese government to limit immigration to 500 per year.[119]

Establishing and maintaining political stability means attempting to create working class consent and various divisions within the working class. In this respect, while the 1903 Royal Commission on Industrial Disputes in the Province of British Columbia was part of the ideological offensive against the socialists and working class disaffection (in its endeavor to "educate" the workingman and discredit the socialist unions), the 1902 Royal Commission on Chinese and Japanese Immigration can be seen as a similar attempt to drive a wedge between the socialist movement and the conservative unions. For, in promoting the belief that Chinese and Japanese labourers were the 'root cause' of job scarcity and low wages, the Commission gave credence to the claim of the craft unions in B.C. that Asiatic competition was a central issue in their complaint.

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[118] Ireland (1960:218), for one, argues that, in its efforts to become a nationwide organization, the T.L.C. was acting on the basis of expediency. He states "One might conjecture that this ninth item might have been included in the Platform of Principles as the price of continued support from British Columbia unionists."

[119] P.A.C. Governors General Numbered Files file 332, vol. 199. Verville, President of the T.L.C. to Laurier, September 17, 1907. Laurier's response, dated September 21, 1907, cited the trade advantages accruing from the treaty with Japan and questioned the "allegation" that a crisis had arisen in B.C. by reason of an unprecedented influx of Japanese. Mentioning the recent riot, Laurier suggested that the cause was related to Asiatics generally, not just the Japanese. He then cited the need for an investigation of the causes of the influx or Oriental immigration before any action could be taken by the government.

Nevertheless, promoting a 'definition of the situation' couched in racial terms, while it helped to maintain a distance between the 'legitimate' and 'illegitimate' unions in their perception of the economic situation, did little to quell the unrest. If anything, anti-Asiatic sentiments, similar to the 1880s, became a source of unity for the conservative unions in B.C. As Governor General Grey lamented to Laurier during a trip to B.C.:

> At present B.C. is being tyrannised over by American Trade Unions! and nobody that I have met, with the exception of Dunsmuir and Mrs. Ralph Smith, has the courage to say Boo to them. Ralph Smith realises that the great want of B.C. is more labour, curses his fate that his gallant wife should have to roast her comely face over the kitchen fire every day because the Chinese Head Tax makes it impossible for him to get a Chinese Cook, but even he, stout fellow tho he is, realises that his position makes it desirable that he should keep his opinion as to the desirability of importing more Chinese Labour to himself.[120]

Indeed, the 1907 riot signified the intensity of the labour situation in B.C. That the riot was clearly an incident of 'labour unrest' was noted by the British Ambassador, Claude MacDonald, in correspondence with Grey:

> There can be, I think, no doubt that the whole difficulty on the American Continent is purely a labour difficulty; all the sensational newspaper articles against immorality, unsanitary habits, etc. appear to be written with the object of obscuring the real issue and are, in any case, entirely beside the mark and for the most part quite untrue; the

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[120] P.A.C. Laurier Papers MG26G page 321. Grey to Laurier, 4 October, 1906.

> plain fact is that those in possession of the labour market object to the competition of men who are willing to do the same work as themselves for a lower wage or to do more work for the same wage. This objection to somewhat natural and the incident now reported shows that it is held quite strongly . . . [121]

Moreover, that Mackenzie King played such a significant role in the events following the riot seems no accident. For one, it was logical for the federal government to send its Deputy Minister of Labour to investigate what had been defined as a 'labour unrest'.[122] King had been a very central figure in the state's ideological offensive against the socialist movement, and had been actively involved in mediating capital - labour conflict generally. While King's views on the labour question, particularly his distinction between 'good' and 'bad' unions, have already been discussed in some detail, the views which King himself held on the Oriental question are also insightful here.

During his trip to B.C. in 1901 to investigate the W.F.M. strike at Rossland, King remarked in his diary on the 'suitability' of Chinese labour:

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[121] P.A.C. Governors General Numbered Files file 332, vol. 199. Claude MacDonald to Sir Edward Grey, 1 October, 1907.

[122] According to King's diary, he was also instrumental in responding to the T.L.C.'s protest over Japanese immigration. Apparently Laurier had asked King to draft a response to the September 17th telegram, which he wrote - to the effect that the government was fully conscious of the situation in B.C.; that enquiry was being made into the disturbance as well as the recent influx; and that friendly relations with Japan was the best assurance of a satisfactory solution. Laurier, upon reading the draft, noted that the statements it contained were not true. King responded to this by stating "that the congress was a sort of hot bed of agitation at present and that it would be unwise to give them anything which they could take up as a further source of discussion and agitation." P.A.C. W.L.M. King Diaries MG26J13, page C2096, 19 September, 1907.

> Everywhere in the houses in Rossland, one sees the Chinese servants and what I have seen of them makes me feel they are suited perfectly for this work. White labour should go into industries and trades and leave the lower grades of work to these people who enjoy it and do it well.[123]

Nevertheless, although cognizant of the advantages which had been gained from the presence of Chinese labour in B.C., King was also keenly aware of the opposition to the Chinese which prevailed. He wrote:

> The Oriental labour question is the big one for Br. Columbia and our West, whether it can be made as good a thing as slavery seems doubtful, because it wear (sic) the semblance of free contract. I think this country is well rid of the Mongolian classes, but it looks as if they were destined to become our slaves. It is a serious problem for the West.[124]

But King - ever the conciliator - was likewise intent on striking a balance between the demand for Chinese labour and the opposition which its presence generated. For example, in a letter to Mrs. Fitzgibbon, whom King had met when in B.C. in 1907, he continued a discussion they had had on the Chinese question. King was of the opinion that the head tax should remain in force, but that a law be enacted

> which would restrict the occupations into which Chinese coming to Canada would be permitted to enter, beginning possibly with the two occupations of agriculture and domestic service and advocating that the Chinese entering Canada to engage in these occupations might take out a license which would entitle them to exemption from the poll tax. . . . By keeping the law regarding the Chinese upon the statute books you would not encounter to the same extent the opposition of those who are interested in excluding Chinese labour and by advocating exemption in the case of agricultural

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[123] P.A.C. W.L. M. King Diaries MG26J13 page 1687, 19 November, 1901.

[124] Ibid., page 1665, 30 September, 1901.

> and domestic service only the proposal would receive a pretty general support.[125]

Such were King's views on the Oriental question which, when added to his position on the 'labour problem', give us some insight as to the kind of philosophical and experiential baggage which he brought with him to Vancouver in 1908 when he investigated Chinese claims.

Upon concluding with his examination of one of the opium manufacturers, who King said had given "interesting and valuable evidence," he added: "We will get some good out of this riot yet."[126] While the intention here is not to impute conspiratorial motives on King's part (although, given his political cunning, he should not be underestimated), what is being suggested is that the subsequent decision to criminalize opium use must be seen in terms of the historical process in which the drug laws emerged. The Canadian state was at that point in time confronted by a 'crisis of legitimacy' - a threat to the system which had to be responded to in some fashion. The increasing intensity of the labour unrest in B.C. was emanating from two fronts: the socialists, who were intent on defining labour issues along class lines, and the more conservative craft unions, as represented by the T.L.C. Although the socialists did not adhere to an anti-Asiatic stand, anti-Asiatic sentiments were running high in the province. As a result, the Asiatic Exclusion League had been formed in the summer of 1907 by members of the Vancouver T.L.C. and the A.E.L. was seen as responsible for the riots which followed shortly afterward.

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[125] P.A.C. W.L.M. King Papers MG26J1 vol. 6, page 5985. King to Mrs. Fitzgibbon, 25 November, 1907.

[126] cited in the Vancouver Province, June 3, 1908.

Following the theoretical reasoning of the Marxist approach, for the state to successfully mediate class conflict, such threats have to be dealt with in other than class terms. In the case of the 1907 riot and the intensity of the unrest which it symbolized, the conflict was managed in a number of ways.

For one, an effort was made to pin the responsibility for the riot on "foreign agitators." Shortly after the riot occurred, for instance, Governor General Grey wrote to Laurier: "I hope the result of the investigation by the Govt. into the causes of this abominable outbreak may be to show that it was not spontaneous but the work of Seattle and other American organizations."[127] In an effort to further such a 'definition of the situation' and gain evidence to that effect, the government hired T.R.E. McInnes as an 'agent provocateur' to report on the activities of the A.E.L.[128]

For another, the conflict was interpreted as a 'race problem' stemming from the influx of Asiatics into the province. Accordingly, Lemieux, the Minister of Labour, was sent to Japan to negotiate an agreement which would regulate the flow of Japanese labourers to Canada. And King was sent to Britain to confer with the British authorities on East Indian immigration. In addition, the Royal Commission on the Methods by which Oriental Labourers have been Induced to Come to Canada further reinforced this definition of the situation as well as the appearance that the government was taking action to resolve the matter.

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[127] P.A.C. Grey of Howick Papers, page 501-2. Grey to Laurier, 13 September, 1907.

[128] See: for example: P.A.C. Governors General Numbered Files file 332, vol. 199. McInnes to Oliver, 1 October, 1907. Numerous telegrams and letters between McInnes and Laurier, Gov. Gen. Grey and several other members of the federal government can be found in the Public Archives, all dealing with the subject of the Oriental question.

Finally, as a result of King's investigation, the situaiton in B.C. was defined as a 'moral' or 'normative' problem, as evidenced by the opium trade carried on by the Chinese and all of the 'immoral' connotations associated with it.

In short, the 'definition of the situation' generated by the state was that an 'alien element' was responsible for the deteriorating situation in B.C. It was not, in other words, the fundamental material conflict between capital and labour that gave rise to problems and tensions within the system - but the invasion of 'foreign agitators', 'immoral outsiders' and the like.

The Opium Acts further reinforced this 'definition of the situation'. Indeed, that the decision to criminalize opium use was part of an ideological battle to establish and re-establish political hegemony is evidenced by several factors.

To begin with, it does not appear to be entirely coincidental that Mackenzie King was an important figure behind the drug legislation. After all, the 1908 Act was based on King's investigation carried out while assigned to deal with the labour problem which underlay the 1907 anti-Asiatic riot. Given, therefore, that the problem being dealt with was labour unrest and social discontent - and not drug addiction - the primacy of the opium question on King's list of priorities becomes suspect. Upon closer investigation, such a suspicion is confirmed by at least five separate indices.

First, a reading of King's Report on the need for the suppression of the opium traffic leads one to question the exact nature and depth of his so-called "investigation."

Second, King's otherwise exhaustive diary - which details, among other things, the seating arrangements of the various social functions he attended - contains virtually no mention of the opium question.

Third, in presenting the 1911 Act to the House of Commons, King relied heavily on newspaper articles as a source of information about drugs. As he himself admitted to the other members of the British delegation at the Opium Commission, King was not, by any means, a specialist in opium.[129]

Fourth, singling out opium use among the Chinese apparently served other purposes, since the opium issue provided an avenue for bringing about the restriction of Chinese immigration. As King wrote: "visiting China to attend the Opium Commission afforded an opportunity to quietly discuss the situation with the Chinese authorities and find out their feelings on the matter."[130]

And, fifth, that King's political ingenuity was at work in 1908 is implicated by the fact that in 1919, as Leader of the Opposition, King chastised the government for dwelling on such an 'insignificant' matter as opium use, when the country was facing social and economic chaos. In his words, the government should have

> propounded some policy which would help relieve the high cost of living, instead of skirting about that great issue and dragging in small affairs such as legislation for the regulating of the sale of drugs.[131]

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[129] P.A.C. W.L.M. King Diaries MG26J13 "Mission to the Orient" page G 2215451.

[130] *Ibid*., page E2215340.

[131] Canada. House of Commons Debates (1920), page 1754 (emphasis added).

On another level, the criminalization of opium use essentially amounted to the creation of a social problem by the state. Before the 1908 Act and its subsequent amendment, opium use was not generally defined in the public mind as a social problem (c.f., Solomon and Madison, 1976-77; Green, 1979). Clearly, the state was aware of opium use among the Chinese as early as the 1880s. And both the federal and B.C. governments collected considerable revenue from opium imports, indicating an awareness and implied condonement of the practice.[132]

Moreover, one could argue that prohibiting the importation and manufacture of opium for non-medicinal purposes in 1908 was, in some ways, akin to beating the proverbial dead horse. For by 1907, the tonnage of crude opium imports was at a level almost equivalent to 1884, while the decade 1885 to 1895, had seen imports reach levels almost twice as high as in 1907 (Solomon and Madison, 1976-77:243). As well, it is worth remembering that a comparatively insignificant amount of imported opium was prepared for smoking as was used by the much larger Caucasian-owned pharmaceutical industry (see: Chapter Seven above).

As it was, legislating against the importation of opium for non-medicinal purposes drove the drug trade underground and caused prices to skyrocket, thus creating a profitable market for smugglers (c.f., Chan, 1983:77). Consequently, it would seem that official prohibition itself determined the gravity and nature of the problem, rather than the other way around (c.f., Green, 1979:63).

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[132] For example, for the five year period from July 1, 1903 to March 31, 1908, the federal government derived a total of $267,364 in revenue from opium imports. P.A.C. Laurier Papers MG26G volume 560, "Report on Opium and Morphia in Canada," February, 1909.

With respect to the 1911 Act, obviously the Shanghai Opium Commission had an influence on the legislation. Several of the recommendations made by the Commission were incorporated into the Act. But it is important to recognize that economic concerns were very much a factor in the Commission itself. For one, the U.S., who had summoned the Commission, had adopted an anti-opium position at least partly as a way of eroding the European domination of trade with China (c.f., Green, 1979). Moreover, both Britain and China had a considerable stake in the opium question. Entire states in India and entire provinces in China derived almost all of their revenue from the production and marketing of opium. This 'hidden agenda' of the Commission was not missed by King. Of the British delegates, for instance, King noted: "Their attitude appears to be one of doing as little as possible. In fact they are inclined to belittle the whole Commission."[133] And, with respect to the Chinese, he wrote: "It is the belief that if the Chinese government had wished this Commission to be a serious factor, they would have appointed men of higher rank, whose weight would have been more considerable."[134]

Finally, the fact that for at least five years after the 1911 Act was passed, over 80 percent of those convicted for offenses under the legislation were given the option of a fine (rather than a prison sentence) could be taken as evidence of the symbolic function of the laws.[135]

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[133] P.A.C. W.L.M. King Diaries MG26J13 "Mission to the Orient" page G2215453.

[134] *Ibid*., page G2215475.

In sum, all of these various factors suggest that the legislation ostensibly created to deal with opium use had other not so obvious purposes. Clearly, the 'fit' between legislation aimed at the 'immoral' habit practised by the Chinese and the ideology of an 'alien element' is inescapable. Opium-smoking, as such, became an easy symbol for the dangers and evils of the 'Yellow Peril', and the opium legislation helped to affirm this group of aliens as a major cause of social problems.

Indeed, such moralizing was not lost on many of B.C.'s working classes. As indicated earlier, the racist sentiments which existed among the working class were often effectively exploited. In addition, it could be argued that artisans and craft workers were especially receptive to the moral content of the drug laws. As Palmer (1976:13) has noted, for instance, skilled workers in the nineteenth century had joined the campaign against the "demon rum" led by employers and "crusading zealots" - but not because they saw drink as the 'social evil'. Rather, the "cold water cause" was often seen as a means to a larger end: the maintenance of craft workers' autonomy. In the same way, one could expect that craft workers would not be inimical to a campaign against opium use. The point being, however, that their support of such moral causes rested on different reasons than those of other groups or classes in the population.

Subsequently, one could argue that the drug laws were not so much directed at the Chinese, but rather they helped to identify the Chinese as a source of the problems confronting B.C. society. By identifying the source of social problems as 'foreigners' or 'aliens', the laws further de-legitimized the competing view of the socialist movement. Moreover, the continuing identification of unrest with aliens was more or less a symbolic concession to the "legitimate" conservative unions, who were more willing to co-operate with capital than the "illegitimate" socialist unions, who were more hostile to capital. In this fashion, the drug laws drove another wedge - however small - into working class unity.

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[135] See: Canada, Sessional Papers volume XLVII, 1912-13, pages 345-300; volume L, 1915, pages 286-347; volume LII, 1917, pages 270-333. This percentage also held for the years 1920 and 1921. See: volume LVII, 1921, pages 185-249.

Needless to say, it should be emphasized that the passage of the drug laws - or even the legislation and agreements to restrict the flow of Asiatic immigration - did not bring about an end to social unrest in British Columbia. But such is not the point being made here. Rather, what is being suggested is that Canada's drug laws emerged in the midst of a growing class conflict - a conflict in which the Canadian state was clearly involved. And as that conflict intensified, so too did the need for the state to respond to it - not simply by force - but by ideological and normative means as well. Consequently, the drug laws can be understood as part and parcel of a much wider effort by the state to respond to a legitimation crisis and, hence, maintain and reproduce the social relations of capitalism in the early 1900s.

Chapter Ten

Conclusion

In the Introduction, it was stated that this dissertation represents an attempt to contribute to the development of criminological thought by formulating a Marxian theory of law and crime under capitalism. This intention was carried out through a somewhat far-reaching exercise which began with a critical examination of existing attempts to formulate a Marxist approach to crime and, as a result of this critique, the realization that, if a Marxian theory of law and crime was to be forthcoming, it would have to be one which was informed by a coherent Marxist theory of the capitalist state. As such, it became necessary to broaden the scope of theoretical inquiry, first, by conducting an investigation into the merits and deficiencies of current Marxist theorizing on the state and, second, by elaborating the basic premises of Marxist political economy on which, it was held, a coherent theory of the state had to be based. Only at this point did it become possible to again narrow the focus of the discussion to the task of developing a Marxist theory of the state in capitalist society. This theory of the state then provided the necessary backdrop for the formulation of a Marxian theory of law and crime. The formulation of a Marxian theory of law and crime itself involved a two-staged process.

First, it was necessary to explain an apparent paradox, that being: If law in a capitalist society is, by definition, class-based law, then why does it have the 'appearance' of neutrality and equality?

The solution to this paradox was sought in an examination of the form which law takes in a capitalist society. Using the work of the Soviet legal theorist, Pashukanis, as a starting point, it was argued that the 'essence' of law derives - not from the level of exchange, as Pashukanis suggested - but from the level of production. By viewing law as derived from the level of production, the class character of law was revealed, since it is at the level of production where exploitation occurs and hence, the class-based nature of the system is rooted. Once this was acknowledged, then the 'appearance' of law as a 'neutral force' could be explained by the separation of economic and political spheres under capitalism. In other words, at the same time that capitalist commodity production creates (and requires) the phenomenal form of the 'political citizen', thus disguising inherent inequalities of power, it also creates (and requires) the legal form of the 'juridicial subject as a bearer of rights', a formal equality which obfuscates the substantive inequality.

When viewed in this light, law takes on an important political component. That is, while law has an economic base - while it derives from and expresses the social relations of production - it does not do so in strictly economic terms. For at the same time that law regulates exchanges, it must also mediate the antagonistic class relations which are at the core of the productive process. As such, while the 'essence' of law is rooted in the economic sphere, capitalist production requires the 'appearance' of formal equality before the law in the political sphere. And this requirement is met, in large measure, by the rule of law.

Once the form of law had been clarified it was then possible to move to the second stage of the analysis: a more detailed examination of the criminal law. This essentially meant a shift in focus from the form of law to the content of its activities, that is: how does criminal law function to maintain and reproduce capitalist social relations? To address this question, the discussion centered around two main areas: One was an elaboration of how the criminal law figures in the overall operation of the capitalist state. Here, the attempt was made to outline the functions performed by the criminal law with respect to maintaining the conditions necessary for capital accumulation and the legitimation of capitalist social relations by means of both coercive and ideological domination. The second area pertained to specifying the conditions under which criminalization will take place. In other words, what factors or processes determine the kind of persons or behaviors which will come to the attention of the criminal justice system? Using the concept of 'problem populations' as a focal point, four main sets of factors were outlined: one concerned the 'problem population' itself; the second pertained to the character and role of the state; a third related to the nature and extent of class conflict; and, finally, the fourth pertained to the stage of development of the capitalist system.

In an effort to gauge the explanatory power of the Marxian theory of law and crime, the discussion moved next to an investigation of the origins of Canadian narcotics legislation and the decision to criminalize opiate use in the early 1900s which those laws signified. The drug legislation proved to be a rather appropriate subject for this purpose. For although the origins of the drug laws had received considerable attention within the literature, there existed only one explicit attempt to offer a theoretically-based explanation for their emergence - that being the labelling analysis conducted by Cook (1969). Nevertheless, closer scrutiny of the historical record disclosed a number of serious inconsistencies in Cook's analysis - the most significant one being that the three variables which she cited to explain the origins of the drug laws were actually in existence several decades earlier. As such, by utilizing the origins of Canada's drug laws as a 'case example', it became possible to not only offer insight into the emergence of a particular criminal law, but to demonstrate the competing explanatory power of the Marxist versus the labelling approaches as well.

Following the theoretical reasoning of the Marxian approach, it was suggested that a more comprehensive understanding of the issues and questions surrounding the drug laws required the incorporation of three major variables into the analysis - the class position of the Chinese (against whom the laws were directed); the role which the Canadian State (and not just one of its agents) played in bringing about the legislation; and the relationship between the drug legislation - as an element of the normative sphere - and its political and economic correlates. In essence, what was argued was that the drug legislation could not be viewed in isolation from the political and economic developments which were occurring in Canada at that time. Consequently, the interpretation and explanation of the origins of Canada's drug laws from a Marxist perspective demanded a much more broadly based analysis than that offered by the labelling perspective. First, the drug laws had to be situated within the larger issue of the "Chinese question," and second, the "Chinese question" itself had to be understood in the context of the economic, political and ideological dynamics of the rise and consolidation of industrial capitalism in Canada.

In carrying out this program, the "Chinese question" was first placed within the context of the rise of industrial capitalism in Canada. To do so required the somewhat arduous task of pulling together a plethora of variables which were at work during the period. Nevertheless, what the discussion endeavored to point out was that the late 1800s and early 1900s was a period of capitalist ascendancy in Canada; and that Chinese labour played a significant role in that ascendancy by providing a source of cheap labour for the burgeoning capitalist industries in British Columbia. Consequently, the Chinese also became a part of the working class response to the erosion of the workers' control over production and the negative consequences for workers which capitalist development incurred.

Yet, just as the response of the working class to capitalist ascendancy varied over time and took on a variety of different forms, so too did the response of organized labour to the Chinese presence. In this context, two different periods were delineated, along with two different responses to Chinese labour. In the pre 1890 period, the workers' response showed a preference for industrial action over direct political action and the prevailing trend was toward the creation of the more conservative, business-oriented craft unions. The post 1890 period, however, saw the emergence of an increasingly more powerful trade unionism practiced by the socialist, industrial unions. The craft unions had as their main target the immigration of unskilled workers, which led to the promulgation of an explicitly anti-Asiatic response in B.C. In contrast, the socialist industrial unions were more intent on defining conflicts in class terms and, as such, refrained from adopting the popular anti-Asiatic stance.

It was also determined that the Canadian state was very much involved in the ushering of industrial capitalism into Canada. Both Macdonald's National Policy and the actions of Mackenzie King and the Department of Labour testified to the role of the state in meeting the demands of accumulation and legitimation.

Once the "Chinese question" had been generally situated within the context of the struggle for control over production which was at the heart of the rise of industrial capitalism in Canada, and the main 'actors' in that contest had been identified - capital, labour and the state - the analysis could then proceed to an elaboration of how the drug legislation fit in with the larger issue of the "Chinese question." To this end, a significant shortcoming which had been earlier identified in Cook's analysis was singled out: the need for a theoretically grounded explanation of why the opium legislation emerged in 1908 rather than in the 1880s. For it was believed that one test of the strength of the Marxian theory of law and crime would be the extent to which it was capable of offering such an explanation.

To explain why the drug laws emerged in 1908 and not earlier, the two periods under consideration - the 1880s and the early 1900s - were examined using the four sets of factors singled out by the Marxian theory of law and crime to guide the analysis. In so doing, the primary aim was to delineate how the problems posed by the Chinese question differed in nature as well as in their subsequent management by the state over time.

In applying the basic tenets of the theory to the situation up to 1885, it was noted that the 1880s marked the initial phase of the rise of industrial capitalism in Canada. As such, the development of British Columbia industries and the infrastructure necessary to promote and sustain them required an ample supply of cheap labour. Chinese labourers were a chief source of such a labour supply, since their labour could be bought for low wages and their numbers could be increased when necessary.

While the Chinese could not be termed a 'problem population', in the sense that they posed a 'threat' to the social relations of production, Chinese labour did pose a particular 'problem of control'. That is, given the significance of their labour for capitalist expansion, the problem which arose was one of maintaining the exploitable position of the Chinese. And the solution chosen, it was argued, was one of the dissemination and perpetuation of an 'ideology of racism' based on the "cultural pecularities" of the Chinese. In other words, defining the Chinese as an 'unassimilable' and 'inferior' race provided the necessary justification for denying them the basic rights of citizenship. As a 'control strategy', this 'ideology of racism' rendered the Chinese even more passive and vulnerable to exploitation, as well as crippling their ability to effectively compete in the labour market. In addition, racist sentiments provided a 'control strategy' for the working class as a whole, since promoting the establishment of a 'split labour market' along racial lines helped in maintaining the disorganization of the working class.

Nevertheless, it was also held that this 'ideology of racism' stimulated the development of another 'problem of control'. For, although the working class in B.C. was essentially unorganized during this period, anti-Chinese sentiments proved to be an important source of unity among Caucasian workers. As a result, pressures were exerted on both the provincial and federal levels of the state to take measures to restrict Chinese immigration.

While B.C. politicians were quick to capitalize on racial sentiments to win working class votes and further their political careers, the federal government - led by J. A. Macdonald - was not willing to move quickly on the issue. Following the theoretical reasoning of the Marxist approach, it was argued that the main reason for this hesitancy on the part of the federal level of the state was the fact that such a move came into direct conflict with the government's most immediate concern: the building of the transcontinental railway, which was a key element of the National Policy. In effect, the federal government's position on the Chinese question was one contoured by *the need to ensure that the prerequisites for accumulation would be met*; specifically, an ample supply of labour. In short, the position taken was one of 'expediency': the 'immoral habits' of the Chinese could be tolerated *as long as their labour was needed*.

At the same time, however, the federal government was also confronted with a legitimation problem: the need to respond to the unrest in B.C. which anti-Chinese sentiments had generated. Given the primacy of accumulation at this point in time, it was no mere coincidence that the government took action only when the C.P.R. was nearing completion. As was speculated in the analysis, the state *could* have chosen to criminalize opium use, given that the volume of opium imported into the province would have warranted some form of control. But to do so would have given credence to the position of Caucasian workers and, hence, strengthened their demands for Oriental exclusion. As well, the state was also cognizant of the position of B.C.'s capitalists and the role of Chinese labour in the industrial development of the province. As such, it was hesitant to take any action which would jeopardize accumulation and industrial growth. Consequently, the option which was chosen was to impose moderate restrictions on Chinese immigration in the form of a $50 head tax.

The situation in B.C. in the early 1900s was, in some respects, quite similar to that of the 1880s. The Chinese, for one, were still in a relatively powerless position and were shouldering much of the unskilled work in the province. For another, agitation against the Chinese and their 'immoral habits' continued to pesist, along with the efforts of the B.C. legislature to pass restrictive laws. Nevertheless, it was argued that in order to fully comprehend the nature of the Chinese question and the decision to criminalize opium use in the early 1900s, the analysis had to consider one kay variable: the change in the form and intensity of the trade union movemet in B.C. which had dramatically altered the nature of class relations in the province.

Similar to the 1880s, the situation in B.C. in the early 1900s can be interpreted as a 'labour problem'. But the nature of that problem was markedly different in the two periods. In the 1880s, the problem was essentially one of accumulation: labour, specifically Chinese labour, was necessary for the completion of the railroad. In contrast, the problem in the early 1900s was essentially one of legitimation: a serious political crisis of legitimacy dawned in early twentieth century British Columbia, brought on by the deteriorating material conditions of the working class. And the severity of that crisis was indicated by the strength of the socialist movement in the province. Hence, the re-establishment of working class consent was an imperative condition if capitalist industrialization was to proceed. And a very important element in the recreation of consent lay in the repression and discrediting of the socialist movement.

What transpired, therefore, was not simply an economic - but, as well, an ideological - conflict in British Columbia in the early 1900s. That ideological conflict, it was argued, involved a struggle to define and redefine the "relevant properties" of the social environment. On the one side were the socialist unions and political parties who were intent on furthering a definition of the situation along class lines. 'Problems', as such, were rooted in the exploitative nature of the capitalist relations of production. On the other side was the capitalist class and the state - to whom fell the task of resolving the legitimation crisis. In the endeavor to meet the challenge which organized labour posed to capitalist hegemony, the state was involved in promoting a 'definition of the situation' couched in 'moral' and 'racial' terms. That is, the unrest and discontent of the era was due to the 'moral laxity' of various groups in the country - particularly 'foreigners' and 'aliens.'

In short, the argument advanced was that - just as an 'ideology of racism' functioned to justify the exploitative position of the Chinese in the 1880s and hence resolve an accumulation problem - an ideology founded on 'racism', 'aliens' and 'immorality' was utilized in the manufacture of consent to resolve a legitimation problem in the early 1900s. And it was here where the drug laws had to be located.

The 'definition of the situation' which portrayed the Chinese as an 'alien group' who was undermining the prosperity which B.C. had to offer its citizens did find support among the more conservative craft unions in B.C. - especially given its implicit and explicit anti-immigration connotations. Such racist appeals were further reinforced with the influx of not only Chinese, but Japanese and East Indian labourers, into the province. But while promoting a 'definition of the situation' couched in racial terms helped to maintain a distance between 'legitimate' and 'illegitimate' unions in their perception of the situation, it did little to quell the unrest. Indeed, anti-Asiatic sentiments, similar to the 1880s, became a source of unity for the conservative unions in B.C. and eventually led to the outbreak of the riot in 1907.

Following the theoretical reasoning of the Marxist approach, for the state to successfully mediate class conflict, such conflicts have to be dealt with in other than class terms. Accordingly, in the case of the 1907 riot and the labour unrest which it signified, it was argued that the conflict was managed in a number of ways, all of which fit the pattern of a 'definition of the situation' based on 'foreigners' and 'aliens' as responsible for the deteriorating situation in B.C. Most important, however, was the singling out of opium use among the Chinese by Mackenzie King. From the standpoint of the Marxist approach, such a move can be interpreted as one attempt on the part of the state to de-politicize the situation by removing the conflict from the political-economic sphere and placing it within the moral or normative sphere. In other words, the 'problems' confronting B.C. society were not rooted in the material conflict between capital and labour, but in the presence of 'alien groups' such as the Chinese and the deleterious effects which their 'immoral' practices were having on the rest of the population.

The Opium Acts further reinforced this 'definition of the situation'. As the analysis endeavored to illustrate, the criminalization of opium use essentially amounted to the creation of a social problem by the state, since it was official prohibition itself which determined the nature and gravity of the 'problem' and not the other way around. Consequently, it would seem that the drug laws were not so much directed at the Chinese as a 'problem population' in need of control. Rather, they served to identify the Chinese as a source of social problems, since opium smoking provided an easy symbol for the dangers and evils of the "Yellow Peril." In these terms, by singling out the Chinese as a 'problem population', they became a 'scapegoat' for the deeper, more structural problems generated by capitalist development in Canada at the turn of the century.

In sum, the application of the Marxian theory of law and crime to the factors and conditions surrounding the passage of the drug laws pointed to the primacy of certain key variables for an understanding of why the decision was made to criminalize opium use. In general terms, the most significant variable was that of the stage of development of the capitalist productive process, since the particular stage of development determined not only the level of working class organization and, hence, the degree of class conflict but, as well, the kinds of structural problems - both in terms of accumulation and legitimation - to which the state had to respond. Further to this, while those structural problems imposed certain constraints upon the state, as to what *kind* of action was possible, the particular course of action which *was* taken was dependent upon the perception of the personnel within the state structure as to the nature of the 'problem' and how it could be managed. In this respect, the passage of the drug laws was not an *inevitable* outcome of the problems confronting the state in the early 1900s. Nevertheless, as the analysis has endeavored to underscore, it was also not *coincidental* that the drug laws emerged in the midst of a legitimation crisis - a crisis generated by the increasing class conflict which was evident in Canada in the early 1900s.

Clearly, the explanation for the origins of Canadian narcotics legislation offered here contrasts sharply with that of the labelling perspective. In particular, the role of moral concerns and the moral entrepreneurship of individuals such as Mackenzie King take on a very different light when viewed from the standpoint of the Marxian theory of law and crime. Admittedly, the reform movement of the era *was* of primary concern for many groups within Canadian society. And the research presented here has perhaps not developed the linkages between the drug laws and the reform movement to the extent it deserved. As well, "moral entrepreneurs" may play a role in a full explanation of a historical event. But the main thrust of the analysis has been to demonstrate - in contrast to a labelling analysis - the need to move *beyond* the study of morality 'in isolation' and explore the linkages between elements of the moral or normative sphere and their political-economic correlates. Indeed, when such an investigation was carried out, an explanation based solely on the inclinations of moral entrepreneurs fell into serious question. For, if anything, what the research has determined is that an explanation of the origins of the drug laws which centers around King's moral reformism is inadequate and even misleading. Once the investigation was broadened to include the class position of the Chinese, the role of the Canadian state and the stage of development of the capitalist system, King's role in bringing about the drug laws and their relationship to the broader historical setting became more comprehensible.

In the main, it is believed that the two objectives which have guided this research have been realized. The Marxian theory of law and crime would appear to offer a more systematic and comprehensive theoretical scheme than what is presently available in the area of Marxist criminology. And it is believed that the theory offers a more powerful explanation of the origins of Canadian narcotics legislation than the labelling analysis employed by Cook.

The research, however, has not been without its limitations. For one, the Marxian theory of law and crime is purported to represent a theoretical scheme capable of explaining law and crime *generally considered*. In this respect, the test of the theory's explanatory power has only been a *partial* one - aimed as it was at explaining the emergence of a *particular* criminal law in a *definite* historical period. While such an investigation allowed for a more concrete analysis using the basic tenets of the theory as a guide to enquiry, much more work is needed in the way of gauging the viability of the theory for addressing other problems and issues relevant to an understanding of law and crime under capitalism. For instance, given the broad spectrum of criminal law, the theory presented here may be more directly applicable to some laws and their corresponding behaviors (such as property offenses) and not to others (such as child abuse).

For another, problems were also encountered with respect to the historical research. As with all research strategies, historical research has its limitations, particularly given that much of the data may be scattered or incomplete, making the reconstruction of a historical period somewhat difficult. Much of the evidence presented here could be considered 'circumstantial' in nature and, as such, could perhaps have warranted a more rigorous and indepth examination of the available sources. Nevertheless, given that the main intent of the dissertation was that of theory building and, as such, the purpose of the historical research was to test the basic propositions of the Marxian theory of law and crime, it is believed that what has been presented was sufficient for that purpose.

Despite the limitations of the research, it is hoped that this dissertation has made a worthwhile contribution to not only criminology - but sociological theorizing in general. As well, another possible contribution of the dissertation rests in its attempt to further our understanding of a significant period in Canadian history.

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Appendix A

Chinese Immigration Since The Imposition Of The Head Tax

FISCAL YRS	Exempts	Paying Tax	% of total arrivals admitted exempt	registered for leave	Total Revenue
1886	1	211	.47	829	$ 11,693.00
87	-	124	-	734	7,424.50
88	-	290	-	868	15,694.50
89	112	782	12.53	1322	40,808.00
90	97	1069	8.32	1671	56,258.00
91	12	2114	0.56	16.7	107,785.50
92	6	3276	.18	2168	166,502.50
93	14	2244	.62	1277	113,491.00
94	22	2087	1.04	666	105,021.50
95	22	1440	1.50	473	72,475.00
96	24	1762	1.34	697	88,800.50
97	24	2447	.97	768	123,119.50
98	17	2175	.78	802	109,754.00
99	17	4385	.39	859	220,309.50
1900	26	4231	.61	1102	215,102.00
01	25	2518	1.02	1204	178,704.00
02	62	3525	1.73	1922	364,972.00
03	84	5245	1.58	2044	526,744.00
04	128	4719	2.64	1920	474,420.00
04-05	69	8	89.61	2080	6,080.00
05-06	146	22	86.90	2421	13,521.00
06-07	200	91	68.73	2594	48,094.00
7-8	752	1482	33.66	3535	746,535.00
8-9	695	1411	33.00	3731	713,131.00
9-10	688	1614	29.89	4002	813,003.00
10-11	805	4515	15.13	3956	2,262,056.00
11-12	498	6083	7.57	4322	3,049,722.00
12-13	367	7078	4.93	3742	3,549,242.00
13-14	238	5274	4.32	4143	2,644,593.00
14-15	103	1155	8.19	4373	588,124.00
15-16	69	20	77.53	4064	19,389.00
16-17	121	272	30.79	3312	140,487.00
17-18	119	650	15.47	2907	336,757.00
18-19	267	4066	6.16	3244	2,069,669.00
19-20	181	363	33.27	5529	538,479.00
20-21 (11 mos.)	1550	885	63.66	6807	474,332.00
21-22	273	1420	16.12	7329	723,179.00
Totals	7835	81053	8.81	95034	$21,735,472.00

Source: P.A.C. W.L.M. King Papers volume 80, page C61347. Department of Immigration and Colonization, 4 April, 1922.